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GUSII BRIDEWEALTH LAW AND CUSTOM

BY

PHILIP MAYER

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BY

PHILIP MAYER, D.PHIL. (Oxon.)

Published for

THE RHODES-LIVINGSTONE INSTITUTE

by

GEOFFREY CUMBERLEGE

OXFORD UNIVERSITY PRESS

CAPE TOWN LONDON NEW YORK

1950

OXFORD UNIVERSITY PRESS
AMEN HOUSE, LONDON, E.C.4
Glasgow Bombay Calcutta
Madras Melbourne Wellington
New York Toronto Cape Town
GEOFFREY CUMBERLEGE
PUBLISHER TO THE
UNIVERSITY

MORIJA PRINTING WORKS
MORIJA, BASUTOLAND

572.96
R417F

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PREFACE

The following paper is based on material collected in 1946–7 *among the Gusii (Kisii) people of South Kavirondo District, Kenya Colony, during my first fieldwork tour as sociologist to the Kenya Government. While still in the field I was asked by the Secretariat to provide some information on bridewealth: this was the origin of the present study, and to some extent explains its form also. My first aim was the limited one of setting out the rules applicable to the decision of bridewealth 'cases'—that is, the aspect of bridewealth with which the administrative officer in this field normally has most to do. I have not attempted to discuss the subject of bridewealth in the round, nor to cover the many aspects that must concern the administrator attempting to formulate a 'bridewealth policy': for instance, the place of bridewealth in traditional marriage, law, and social structure; the effects upon it of contact with European culture; or the way it functions to-day, in terms of concrete social phenomena. It is my intention to publish in due course some of my material relating to these wider topics: the present paper may be regarded as an instalment of a more comprehensive study.*

I should like to record my especial gratitude to Dr. Audrey Richards and Professor E. E. Evans-Pritchard, both of whom found time during a busy term to read through the MS. and make valuable suggestions for its improvement; also to the Government of Kenya, particularly to Mr. H. E. Lambert, for permission to publish; and to all those in the field—members of the District staff and missionaries as well as innumerable Gusii friends and informants—through whose co-operation the gathering of my material was made easier.

PHILIP MAYER

London,
July 1948

The appearance of this paper has been delayed for two years by production difficulties. The constant urge to reformulate, which made itself felt when I read through the proofs after this interval, was countered only by the reflection that the paper's aim is limited, and that its factual material has been thoroughly checked during another ten months of fieldwork.

I may add that some more of my material having a bearing on the present subject has been published elsewhere in the meantime ('Privileged Obstruction of Marriage Rites among the Gusii', Africa, *April* 1950), *and that a fuller account of Gusii marriage is in preparation.*

July 1950 PHILIP MAYER

INTRODUCTION

THE Gusii [1] are a Bantu-speaking people, numbering something like 238,000 and apparently on the increase,[2] whose present-day homeland is a mountain region to the south of the Kavirondo Gulf in Kenya. They are cultivators and pastoralists, aided in both capacities by a favourable climate and an ample supply of water. The routine work of agriculture falls mainly to women : stock-keeping is the man's traditional province. It is cultivation that furnishes Gusii with their staple diet, a 'porridge' for which two kinds of grain have to be grown. The special importance of cattle to the Gusii, as to other East African peoples, has less to do with their direct economic usefulness (considerable though this is) than with their ritual and social significance. One of the social uses to which the Gusii put cattle—namely giving them in bridewealth—is the subject of this study.

A considerable fund of knowledge about the attributes of cattle and their needs in health and sickness is common to the whole class of Gusii elders, whose attachment to their beasts often appears to be deep and emotional. To the younger generation the significance of cattle is not quite the same. Men under about forty will not have spent their bachelor days, as their seniors did, living among cattle in a special cattle-village (*egesarate*, pl. *ebisarate*), for these were put down by Government in the 1920's. Boys who would otherwise have been expected to tend the herds in the pastures may now spend much of their time at school instead. The teaching of missions and schools, though as yet affecting only a minority, has done something to undermine the ritual significance of cattle. The progress of a money economy, accelerated by the expansion of markets during the recent war, has diminished the former pre-eminence of cattle as a form of investment and a medium of exchange.

Any resultant weakening in the prestige of cattle is however of minor importance compared with the strength of the hold they still have. Young men as well as old acquire cattle greedily and part with them reluctantly, and the size of a man's herd is still one of the best indices to his social standing. Such is likely to be the case as long as cattle remain the only generally recognized road to marriage. However the attitude towards cattle may have altered in other respects, their use as bridewealth goes practically unchallenged. Even the possibility of challenge is not imagined by any but a tiny minority,

[1] Europeans in Kenya commonly use the form 'Kisii'. While preferring the more 'correct' rendering of the name, I have avoided the vernacular forms Omogusii, Abagusii, Ekegusii, etc., which I translate 'a Gusii', 'the Gusii people', 'Gusii language', etc.

[2] The 1948 census gave a figure of 237,500, as against 181,910 (almost certainly an underestimate) for 1947.

principally of young men who have travelled outside the Reserve during army service.

The inviolateness of the practice of giving cattle in bridewealth is one index of the relative 'backwardness' of the Gusii, compared with other settled peoples in Kenya. It is now some forty years since British Administration was first established in Gusii country (1907). Two punitive expeditions (1907 and 1916) served to break resistance, and administration since then has gone on smoothly enough with a notable expansion of services since the beginning of the 1930's. But Gusii country is comparatively remote alike from the railway and from the main highways of the Colony; the town of Kisumu is some seventy miles away by land, the main connection being by boat across the Kavirondo Gulf; there is no white settlement on Gusii land; and the Missions (of which the chief are Roman Catholic and Seventh-Day Adventist) have found the Gusii field heavy going.

Gusii culture as it stands to-day bears the marks not of one but of two main foreign influences. Before the white man's influence made itself felt, there had already existed for some generations that of the non-Bantu peoples among whom the Gusii form a Bantu island. Relations with two of these peoples, Masai and Kipsigis, were predominantly negative; but in the third case—that of the Luo—there has been intercourse of a kind that has left distinct marks on the culture of a large section of the Gusii people. In dealing with bridewealth, as with any other department of Gusii tradition, we shall have to take into account the differences between two main branches of the culture:

(a) the orthodox practice of the highland Gusii—the Getutu, Nyaribari and Mugirango tribes; these inhabit what seem to be the oldest areas of stable settlement, in the direction of Kipsigis and Masai country;

(b) the less orthodox practice of the lowlanders. Here two groups should be distinguished. The southern Mugirango and Nchari tribes are those most under the influence of their Luo neighbours, with whom they used not only to fight but also to trade regularly, and even—though this is not readily admitted—sometimes to intermarry. The Bassi and Machoge tribes, on the other hand, are mostly pioneers in a recently settled area, with a weak cultural background.

Gusii themselves recognize this main line of cultural differentiation, which they relate to a broad geographical distinction. The people of *Masaba*, 'up east', they say, are those who always know most about the genuine Gusii customs: at the same time they are simpletons (*amaguono*) who have learnt little of the new European ways. In most cases where people of *Chache*, 'down west', have different customs of their own, they themselves will admit that these are not the 'real' Gusii customs.

Political and Judicial Organization

Traditional Gusii society was chiefless. The internal organization of society depended far less on the presence of authorities than on the integrative effect of lineage bonds[1]. A hierarchy of lineage groups ranged from the national unit itself down to the nuclear lineage consisting of one man with his legitimate sons. Lineages of all orders resembled each other not only in their mode of recruitment (agnatic descent) and of definition (reference to an eponymous ancestor), but also in being repositories of corporate rights, capable on occasion of corporate action. Near to the top of the lineage hierarchy is the exogamous clan (*eamate*, pl. *chiamate*). In traditional society this was the most closely integrated political unit; however, like all other kinds of Gusii lineage, it was without any regular head or leader. Generally speaking there are no offices or functions associated with special positions in the genealogical tree.

Under British rule the place of chief administrative unit has been taken by the tribe—the lineage group that ranks above the clan and below the national unit. At present seven tribal locations are recognized, each under its Government-appointed chief. The chiefs are assisted by headmen, similarly appointed, each of whom has charge of one or more clans.

Among the powers originally conferred on chiefs was that of enforcement of legal decisions, which represented an innovation in Gusii society. The traditional judicial system had comprised arbitration at the kinship level by elders of the family (*abagaka banka*), and the wider arbitration of judicial specialists (*etureti* elders) whose sphere extended over a neighbourhood group. Enforcement was generally left to the self-help of the successful litigant, sanctioned by public opinion which the arbitrator's verdict had served to enlist. Later in the era of British administration the judicial powers of chiefs were restricted, and a system of Native Tribunals, with appeal to European officers, was set up. More recently still, a revival of the arbitration of *etureti* elders has been officially encouraged and has rapidly caught on. Both Tribunals and *etureti* elders have their hands full. 'Gusii are exceptionally litigious, as many an official report bears witness: at present the rate of tribunal cases per head of population is among the highest in the Colony.[2] Though land cases are increasing, and claims for money damages sometimes occur, about three-quarters of the civil cases brought to the Tribunals still relate to livestock. Many of these are concerned directly (and some others indirectly) with the law of bridewealth.

[1] Cf. my paper, *The Lineage Principle in Gusii Society*, 1950 (Memorandum XXIV of the International African Institute).

[2] Cf. A. Phillips, *Report on Native Tribunals*, 1945, pars. 112–13.

Bridewealth and the family

Among the Gusii the nuclear family can be legitimately established only by payment of bridewealth. To discuss the implications of a bridewealth transfer is also to define the status and relationships of family members. Bridewealth law, family law and the law of inheritance may be said to form a single complex.

Every Gusii child belongs by birth [1] to a 'house' (*enyomba*, pl. *chinyomba*), consisting of full-siblings with their mother. Every house—and therefore every child—belongs to an *egesaku*,[2] a word denoting the lineage sprung from a certain man. The *enyomba*, then, is a group of uterine kin, the *egesaku* a group of agnates. While motherhood is in the Gusii system primarily a biological concept, fatherhood is less a biological than a jural concept, the tie of agnatic descent (as we shall see) being by no means equivalent to that of physical paternity.

Egesaku and *enyomba* are much more than terms of family relationship: they run right through the hierarchy of lineage groups that organizes Gusii society from head to foot. In this wider context *egesaku* could be rendered as 'lineage' or 'agnatic descent group', *enyomba* as 'segment'. Here, however, we shall be mainly concerned with the primary forms of *egesaku* and *enyomba* —the (father's) 'family', which is also the nuclear lineage, and (the mother's) 'house'.

Bridewealth is woven into family and inheritance law just because it defines both the nuclear lineage and the house.[3] It is bridewealth payment that distinguishes a merely biological family—a group of little significance in Gusii society—from a legitimate family, a group that is all-important for inheritance and succession, legal and mystical allegiance, and membership of all politically significant larger groups.

In the background behind the complex structure of Gusii bridewealth law looms the conception of *egesaku* (that is, legal issue) as something of final and absolute importance. The fear of dying without *egesaku*, or of retribution if one causes another man to do so, serves as an internal sanction for the observance of the law. The great equitable principle from which all specific rules of Gusii bridewealth law will be found to derive is that all men ought to have equal opportunities for founding their own *ebisaku*. Hence the law specially provides for portionless younger brothers, orphans, childless widowers, and even men who are unlucky enough to die without having begotten children. The relevance of the ancestor cult in this connection is obvious (legitimate sons have for instance the sole right and duty of sacrificing to their father's spirit), though the implications cannot be gone into here.

The egalitarian tendency of Gusii bridewealth law fades out beyond a

[1] Or possibly by adoption, see p. 58 below.

[2] *Egesaku* is the name for one of the two doors of the traditional Gusii living-house—the one that opens into the central cattle pen (*obweri*) of the paterfamilias. The plural is *ebisaku*

[3] See Chap. V.

certain point. What has to be secured to every man (as far as possible) is only the necessary minimum of one wife. Beyond this there is no possibility of evening out differences between rich and poor. Gifts of bridewealth stock are impossible, and loans narrowly restricted. The rich man—almost by definition—is the polygamist, the actual or potential father of a numerous *ègesaku*.

As the following chapters are intended to demonstrate, Gusii bridewealth law is far from a mere jumbling together of arbitrary rules. It constitutes what can properly be called a legal system. The broad principles that lie behind it and give it its unity are rarely or never formulated by Gusii themselves: but the fact that they are nevertheless pretty generally understood will not be doubted by anyone who has watched the native handling of bridewealth cases, and the kind of equitable arguments which are invoked quite as frequently as the letter of this or that law. Uniformity on points of detail is not complete even to-day, when administrative and judicial centralization have proceeded farther than ever before in Gusii history. Different elders may still give different rulings on particular cases. The level at which we must look for consistency is not that of detail but that of principle. Here it is absolute, for the principles that govern the bridewealth law are deeply rooted in the social structure. Accordingly the law is adaptable and dynamic rather than static or uniform. The reminiscences of elders confirm that, before as well as after the coming of Europeans, particular rules were constantly being modified in response to changing conditions.[1] Cattle-plagues, migrations and population trends—to name only the more obvious factors—helped to shape a continuing development of which the details must now be beyond the reach of investigation. It should be clear that we cannot expect to construct a rigid paradigm of the 'original' Gusii bridewealth system which shall be correct in all details for every period and place.

In the fact that Gusii bridewealth law is a system there seems to me to lie one justification for isolating it as a subject of study. Another justification is its uniqueness in Gusii culture as a repository of what the European would call rational or scientific thought. Gusii bridewealth law—or perhaps we should say cattle law, of which the bridewealth department is by far the greatest—constitutes a remarkably secular system. Elders call it the law of 'debt' (*esira*). Its infringement injures human beings rather than spirits; its rights and wrongs are argued out, not magically revealed; restoring equilibrium involves no sacrifice or ritual, but is achieved by satisfying the creditor for his 'debt'. Bridewealth has admittedly its religious and magical associations at certain levels: indeed the conceptions of jural descent and lineage allegiance, with which it is so intimately bound up, might well be called mystical. But the non-rational elements in its day-to-day practice are slight and merely peripheral. Little will need to be said in this paper of ritual or magical procedures. The magico-religious side of marriage, culminating in the massive *enyangi* ceremony, falls mainly outside our subject.

[1] Cf. for example, the rules about the counting of calves and about the heifer of *egesango* (p. 16 and p. 35).

CHAPTER I

CUSTOMARY PROCEDURE OF THE BRIDEWEALTH TRANSFER

A. The Transfer of Ownership

1. *The opening of negotiations*

THE cattle transfer which legitimizes the union of a man and a woman is in Gusii custom conducted by the fathers of the two parties. If the father is dead his place will be taken by another relative, e.g. elder brother or paternal uncle. In the following account I speak of the 'father' merely, for the sake of brevity.

Only in very exceptional circumstances would a bridegroom conduct in his own person the bridewealth negotiations on which his marriage depends, unless he is himself an elder and head of a homestead.

Bridewealth negotiations are set on foot only after reports satisfactory to both parties have been given by the 'go-between' (*esigani*, pl. *chisigani* or *abasigani*; *omokobi*, pl. *abakobi*), and then only after these have been confirmed by the personal impressions of the couple. The go-between, who may be of either sex, is usually someone of the kindred of the prospective bridegroom, and charged by the latter (or his father) with finding a suitable bride from among those families outside the clan connected with him by ties of friendship or kinship. The rules of exogamy exclude all women who are (a) of the suitor's own clan, (b) known blood-relatives of his mother, (c) known blood-relatives of either of his grandmothers.

The first task of the go-between is to 'report to both sides' (*ogosigana*). He begins if necessary by discreet enquiries about the girl he has in mind, and then calls on her family to broach the subject of the proposed marriage. The girl's father will naturally want an assurance in general terms that the suitor is in a position to pay bridewealth, but there will as yet be no more specific discussion of the cattle transfer.

If these first approaches are favourably received, the go-between is asked to tell the suitor to pay a visit in person so that the young couple can form a personal impression of each other; and if the suitor on his part approves the first reports of the girl and her family, he accepts the invitation, going some days later with a few of his friends 'to see the girl' (*okorora omoiseke*).

2. *Okomana: the selection of cattle*

If all goes well, the young man asks his father to arrange for the marriage to be effected. The father introduces himself at the girl's home and asks her father to come over on a certain day to look at the cattle. This visit, which is known as *okomana chiombe*, 'the opening out (i.e. scrutiny, selection) of the cattle', will constitute the first important step in the bridewealth transfer.

On the morning of the day named, the father of the girl arrives at the suitor's village with six or seven other elders of his family. The suitor's father, who has already made up his mind which animals to offer, now orders them to be led in from pen or pasture, two or three at a time, for investigation by the visitors. As each beast arrives it will be critically examined by the visiting elders, who question the father searchingly as to its various characteristics—its age, the number of times it has calved, and so on. The animals which meet with approval are led to one side, while any regarded as too thin or too old are rejected and the father is asked to bring others in their stead.

Even a 'modern' young man who has bought his marriage-cattle entirely through his own effort (e.g. with his earnings or Army pay) will not try to conduct his own cattle-view. He will of course make up his mind which animals he wants to offer, but will let the actual negotiations be carried on by some older relative whom he has primed beforehand. It is simply not done for a young man to argue about bridewealth; only an elder who is marrying a junior wife could conduct the negotiations in his own person. In what is still the more usual case, the traditional marriage in which the bridewealth has been assembled wholly or mainly by the father, the bridegroom may even not be present at all when the cattle-view takes place; if he does attend, it is merely as a silent spectator.

The viewing and selection of cattle—followed by that of goats—will continue until the number set aside for the bridewealth is satisfactory to both parties. It is a convention typical of Gusii ways that the bride's father will continue to demand that more cattle be brought for inspection even after both sides are aware that the number which he intends to accept has been passed; and that the bridegroom's father cannot counter this by a refusal, but only by the polite fiction (equally recognized as such by both parties) that 'we have no more cattle'.

There is no indication that a Gusii father regards the offering of stock for bridewealth as an opportunity for ostentatious liberality. On the contrary, both donor and recipient approach *okomana* in a business-like spirit of hard bargaining.

3. *Legal significance of the cattle-view* (okomana)

A beast which has been offered and accepted at cattle-view thereby passes at once into the ownership of the receiving party. No matter where the

bridewealth is actually kept—and it will not all be physically handed over for some time—the new owner's rights have begun to operate, and any of the elders who witnessed the selection will be ready to testify to them. The responsibility of replacing animals that die[1] starts from the moment the cattle-view is completed.

By accepting the animals offered at the view the bride's father declares his final satisfaction. He cannot afterwards ask for more. If not satisfied with the offered bridewealth he should reject the proposal of marriage outright. For in this respect the Gusii system allows no room for payment by instalments.[2] That is to say, although the physical possession of the bridewealth (as we shall see) is always transferred by instalments, the legal ownership never is. Transfer of ownership must be a single inclusive act covering the whole bridewealth.

The completion of the transfer of actual possession of the bridewealth does indeed have a legal significance of its own, but this is in connection with the completion of the marriage, and has nothing to do with the ownership of the animals.

The element of finality in the agreement is outwardly signalized by a large-scale celebration which takes place immediately after the cattle-view. When the negotiations are complete the visiting elders sit down to enjoy themselves round the beer-pot which their host has had prepared for them. The drinking may go on till midnight or longer. When everyone is suitably drunk the host will have a goat slaughtered too. The visitors will not go home till morning.

For the bride's father and his party to reject the proffered match after they had joined in this feast of meat and beer would in former days have been considered a gross insult, resulting probably in fighting between the groups concerned. To-day, when the risk of violent retaliation has been considerably reduced, it is a not uncommon trick for a girl's father to delay his arrival at the suitor's place until evening, thus forcing the hosts to let the festivities precede the business transaction which next morning may not result in agreement after all. One of the Gusii Locational Councils has turned its attention to this abuse in a resolution stating that '. . . any people going for *okomana* must go in the morning and view the cattle after arrival. They may be invited for meat and beer only after they are satisfied. If no agreement is reached they may be given beer only, but no meat.'[3]

B. The Transfer of Possession

The manner and time of actually handing over the possession of the bridewealth differ as between the conservative sub-tribes of the highland districts on the one hand, and the heterodox sub-tribes of the lowlands on

[1] See Chap. IV.
[2] Except reluctantly in the case of the legitimizing of an *omobasi* (see p. 12).
[3] Locational Advisory Council, South Mugirango. Minutes of meeting held on 22 May 1947.

the other.[1] Indeed the Gusii's most common definition of the cultural difference between these two main groups, colloquially termed *Chache* and *Masaba* respectively, is 'they marry differently'. The two forms of custom must here be discussed separately. It will be seen that common to both is the feature of not transferring actual possession of the whole bridewealth at once, but leaving a few animals to be handed over at a later stage which appears to mark the completion of the marriage.

1. *Orthodox custom: highland areas*

Among the conservative *Chache* sub-tribes the marriage transactions are still conducted with a view to eventual solemnization by the magico-religious ceremony of *enyangi*.

The procedure is as follows : On leaving the bridegroom's home after the selection of cattle the bride's father must not take with him even one of the bridewealth animals that are now legally his, but must name a day on which the first consignment of them is to be driven over to his place, and make clear how many he wants left behind for collection later. To insist on taking a few beasts when leaving after the cattle-view, as fathers nowadays sometimes do, is regarded as very poor form.

If the bride wishes, she can afterwards send a message fixing an intermediate day for the feast called 'eating at the place of the in-laws' (*ekeri'-boko*)—an all-night visit paid by the bridegroom and his friends to the bride and her friends, signalized by much drinking, dancing, and festivity. This visit is usually made two or three days before the driving over of cattle.

When the day comes for sending the cattle to the place of the in-laws (*okoira chiombe oboko*), the bridegroom himself stays at home—here, as always, abstaining from the negotiations that concern bridewealth as such—but chooses a party of his friends to drive over the agreed first consignment of bridewealth and fetch home his bride. On the way the party pick up the go-between, who is regarded as essential in the capacity of witness ; for if the girl's father can prove that the cattle-view agreement has not been fairly carried out (e.g. that inferior beasts have been substituted for some of the selected ones) he will refuse to let his daughter go. As soon as the animals have been handed over, to the father's satisfaction, and the young men have been suitably entertained, the girl can be taken home. But at this stage she is bound to make some show of resistance. She may plead for delay—'my mother is ill', 'we have not yet had the usual feast', or any other excuse she can think up; in any case she will pretend to hide herself when the young men try to set out with her and will refuse to walk when they get her on the road at last—apparently in the depths of misery, but it is taken for granted that her reluctance is only put on.

When the bride reaches her husband's home the period of *egechabero* (cf. *ogochabera*, to decorate) is begun. During this time, usually a month or six weeks, the couple may be said to be on honeymoon. For almost the

[1] See Preface.

only time in her life (until the exemption which comes with old age) the woman is under no obligation to work, though she may voluntarily join in household tasks in order to impress her mother-in-law with her willingness and industry. She is to dress in her best clothes and ornaments, eat the choicest food, and be constantly entertained by her husband's friends. The bridegroom is expected to kill one or more bulls and send portions of the meat to his parents-in-law.[1]

At the end of *egechabero* she goes home to her parents for a month or so, and if she has any strong objections to the marriage she can now put them before her father. It is one of the recognized opportunities for breaking off the match.[2]

There remains the question of the cattle which were not handed over with the first consignment. These may number anything from one or two cows to about half the amount of the bridewealth. The purpose of setting them aside for later collection may be twofold :

(a) *Obligatory custom.* One or perhaps two animals must in any case be 'left for *enyangi*', i.e. until the bride's father is ready to perform this ceremony for his daugher. The handing over of this final instalment will be the first stage in the *enyangi* proceedings.

(b) *Reasons of convenience.* The bride's father may also choose to leave behind some further portion of the bridewealth, knowing that his legal title is secure, that he can send for the animals whenever he likes, and that meanwhile the bridegroom's father is responsible for making good any that may die. This arrangement is often used as a device for securing the best animals against the demands of creditors. If the bride's father knows that creditors will pounce on him as soon as he has any cattle in the pen, he takes the precaution of having only the worst animals sent over, so that his debts can be met from their number.

The transfer of the animals 'left for *enyangi*' takes place on the occasion known as 'discussion' (*egekwano*). On this day the bridegroom's father, together with two other elders and with the go-between, visits the bride's father in the morning for discussion and agreement as to the amount of the outstanding claims : that is, the number of animals still not collected, and the number that have died or been lost and must be replaced. Agreement is signalized by the killing and joint eating of the 'bull of discussion provided by the bride's father, which is accompanied by the drinking of much beer. Here again the bridegroom himself takes no part : he is not even allowed to accompany his father.

The last remaining cow of the bridewealth, handed over at this time, is known as the cow of *enyangi*. Some elders however maintain that the cow

[1] See p. 17 f.
[2] See p. 50 f.

of *enyangi* ought properly to be another animal, additional to the bridewealth, given at the same time in order to recompense the bride's parents for all the trouble and expense of making *enyangi*. The bride's mother sometimes claims it as her 'cow of heat'.[1]

2. *Custom of lowland areas*

Since *enyangi* is little practised in the *Masaba* areas arrangements for completing the transfer of the bridewealth have to differ accordingly. The Gusii say that 'in these parts a man thinks he is properly married as soon as he has his bride at home', whereas in the orthodox highlands "even an old woman is not properly married unless she has her *enyangi*'.

In the lowland districts the first consignment of the bridewealth is taken home directly after the selection. It is obligatory for one or two cows to be left behind. All the rest can be driven across the same day by a party of the bridegroom's friends (not the bridegroom himself), and the bride's father is given them with a promise that the balance will be brought over later. The bridegroom will then fix a day for his friends to take over the last instalment and at the same time collect the bride. It is however permissible for the bridegroom to collect his bride in person—something that would not be tolerated in the orthodox districts. If he does so, it must be after his friends have taken over the remaining animals : he cannot himself drive over any part of the bridewealth.

The marriage is complete as soon as the entire bridewealth has been handed over and the bride taken to her husband's home. The *egechabero* month is however observed in the same way as in the conservative districts, and the time which the bride spends with her parents aftewards is still regarded as a recognized opportunity for 'divorce'.

3. *Enyangi*

If *enyangi* is to be made, the bride's parents should start preparations for it as soon as all outstanding bridewealth claims have been settled at the discussion.

The *enyangi* ceremonial is far too massive to be described in detail here, but a brief outline must be given to make intelligible the references which will have to be made later in the text.

Enyangi proper occupies two successive nights, which are very different in character. On the first (which is called *egetaorio*) open house is kept for young men, including many classificatory 'brothers' of bridegroom and bride, and no unbidden guest may be turned away. After a display of wrestling the night is spent in drinking, singing, dancing, and consuming the meat of a bull, specially provided by the bridegroom. The second

[1] See p. 20

night, called *echorwa*, is one of solemn magico-religious ceremonial behind closed doors, attended by perhaps a dozen guests from each family, and presided over by a special priest and priestess.

Three days after *echorwa*—or two days if the husband was already married—a white he-goat is sacrificed at the home of the couple. Next morning the bride takes one of the traditional '*enyangi* names' by which she will be known for the rest of her life. Her iron ankle-rings (*ebitinge*) are put on, signifying that she has now obtained the full status of a married woman, and is bound to her husband both by legal and by magico-religious sanctions.

C. Irregular Marriages

The account given so far is of a properly conducted Gusii marriage. But the sequence is upset, and the relative influence of the parties thrown out of balance, if the young couple take matters into their own hands by living together without waiting for the proper formalities.

A girl who agrees to live with a man who has not paid bridewealth for her is derogatorily termed 'a chooser' (*omobasi*, cf. *okobasa*, to choose for oneself). Even according to the laxer standards of to-day she is doing something reprehensible. It is evidently not her entering into unlegitimized sexual relations that constitutes the serious fault; a girl's behaviour is often condoned if it involves no more than that—for example if she receives lovers at her own home. The grave breach of duty is to rob father and brothers of her custody, putting her own group at a great disadvantage when the bridewealth negotiations are at length set on foot.

If a father finds himself unable to regain custody of a daughter who either eludes recapture or keeps running back to her lover, he has no practicable alternative but to start negotiations for the legitimizing of the union. If the young man is able to pay the normal amount of bridewealth the affair may be said to do no harm to anybody. But if, as more often happens, he has few cattle or none at all, the father becomes the victim of a dilemma. The acceptance of (say) one or two animals at the cattle-view would look like full consent to the marriage on these terms. As already mentioned, the normal response of a father who is not satisfied with the amount of the bridewealth offered at the view is to break off the match entirely. A father whose daughter insists on remaining with her lover cannot in fact break off the match. But neither can he, in the interests of himself and his sons, be satisfied with receiving a mere fraction of the proper bridewealth.

In these circumstances a father may waive some part of his claims, and accept perhaps two-thirds of the normal bridewealth. The young man's brothers often do their best to help him with loans of cattle, even if it is not really his turn to marry. 'This girl who has come to us is a good girl, and it would be a pity if her children were lost to our *egesaku* (lineage) for lack of cattle.' But if not even a reasonable portion of the bridewealth can be got together the father may resort to the unsatisfactory device of a public

promise. He declares before all the witnesses that, contrary to appearances, his present acceptance of so-and-so many cows does not imply final consent to the marriage: he will not be satisfied without so many more. The young man's father, or whoever is acting for him, must then publicly undertake to pay the balance as soon as possible. It must be noted that such a promise would not seem valid to a Gusii if it were made in merely general terms. Not only must the promised cattle be a specified number, but the source from which they are to come must also be specified. Thus a man often pledges in advance part or all of the bridewealth of an unmarried daughter, or the cattle that he expects to receive in settlement of some debt. It is not uncommon for an impecunious lover to resort to pledging the bridewealth of a daughter still unborn. That a whole generation must elapse before the promise can be fulfilled gives him little hope of evasion: there is not the slightest likelihood that the creditor family will 'forget'.

A specific mortgage—the only promise that can be considered a reasonable substitute for the legal transfer of real cattle that ought properly to take place at the cattle-view—does at least give the claimant a hold over identifiable cattle, even though the attainment of possession will be unduly delayed. Nevertheless there is nothing more heartily detested by fathers as a class. The man who is forced to let his daughter go for a few cattle and a promise of more will bitterly quote the proverbial phrase 'A debt (*esira*) takes the girl'; that is, 'In return for my daughter I have got a mere promise.'

D. Significance of Customary Mode of Bridewealth Transfer

The traditional Gusii procedure of transferring bridewealth, as we have seen, cannot properly be called payment by instalments, since legal ownership of the entire bridewealth herd is decisively transferred at the initial cattle-view. Yet at the same time it cannot be called payment in a single act since physical possession of the herd not only may be, but must be, transferred in stages.

What happens (we may say) is that possession of the bridewealth is exchanged in stages against rights over the girl, the stages being as follows:

Stage 1. Cattle-view agreement (okomana)

A surrenders the rights of ownership over the herd, but retains physical possession of it. *B* binds himself to surrender certain rights over the girl and her offspring, but retains physical possession of her.

Stage 2. Beginning of egechabero

A surrenders physical possession of the main part of the herd but retains one or more animals. *B* surrenders physical possession of the girl, but retains right to take her back in case of disagreement.

Stage 3. Enyangi

A surrenders physical possession of the remaining animals: the entire herd has now been finally transferred to *B*. *B* surrenders the right to recover custody of the girl: she has now been finally attached to the *egesaku* (lineage) of *A*.

Thus the effect of the procedure is that, until the final *enyangi*, each side at every stage retains a 'hostage'. This is a system that has to be seen in relation to the political conditions of former times. In days when the exogamous and the political grouping were coterminous (before British Administration deprived the clans of their virtual sovereignity),the enforcement of marriage rights was *eo ipso* fraught with uncertainties and risks. The hostage was no mere formality, but a necessary security and safeguard.

CHAPTER II

THE MARRIAGE OUTLAY: BRIDEWEALTH PROPER AND MARRIAGE GIFTS

A. The Composition of the Brideweatlh Proper

THE bridewealth proper consists nowadays of a number of cows and heifers, one bull, and a number of goats (including at least one he-goat). If both parties agree, the goats may be commuted for an extra heifer, which has a fixed value in terms of goats according to the prevailing rate of exchange.[1] The cows and goats are called animals of substitution (*nyaika*) i.e. replacement for the girl.

The rules concerning these animals of 'substitution' are as follows:

1. Nine cows cannot make a bridewealth, since this number is considered magically dangerous. Any other number is possible.

2. The position of the goats in the bridewealth payment has to be specially noted. They are definitely reckoned as an essential part of the transaction, yet they are little esteemed in comparison with the cattle, and the rules about their return and replacement differ accordingly. Thus the return of identical animals has never been claimed for goats as it has for cows; in the same way, a claimant may willingly accept a he-goat in place of a she-goat, though nobody would agree to accept a bull instead of a cow.

This equivocal attitude towards the bridewealth goats has a historical explanation. Elders maintain that before the great cattle shortage of the 1890's the bridewealth proper consisted of cows only. Goats and bulls when given at all were given as customary presents, or for sacrifices connected with the marriage, and not as an integral part of the bridewealth. The traditional practice of bartering goats for cattle at a fixed rate made the goats the obvious substitute when cows for bridewealth were hard to come by. Goats, then as now, could play the part of small change: various numbers of them could be included in the bridewealth to represent various 'fractions' of a cow at the defined rate of exchange. It may be because the practice of including goats in the bridewealth has outlived the real *raison d'être* it had during the cattle shortage that we find certain incongruities and inconsistencies in connection with it.

3. The number both of cows and of goats will depend partly on individual bargaining, but still more on the current rate or standard which at any time prevails all over Gusii country, with only minor variations from tribe to

[1] At present (December 1947) ten or twelve goats are reckoned equal to one heifer.

tribe. The Gusii themselves say simply, 'we see that all the other fathers are asking so much for their daughters, so we also demand the same'. Except for those occasions when conscious policy has intervened to fix the rate, they can only explain the fluctuations in terms of what the European might call the price mechanism that governs the price of a commodity in a more or less perfect market. The vicissitudes of the bridewealth rate—it has been known to number anything from one heifer or less to 20 cows or more—as well as the various forces which seem to govern them, cannot be fully discussed in this paper.[1]

4. Each animal, cow or she-goat, must be accompanied by its offspring if the latter are still suckling. But these calves and kids are not now usually reckoned in the amount of the dowry proper. Whereas the full-grown animals are *nyaika*, 'replacement', the calves and kids—together with any born after the transfer—are merely *emebiara*, 'offspring', or *amabere*, 'milk'. If to-day a Gusii states that the cattle paid in bridewealth on a certain occasion were 'ten', he will probably mean eleven head of full-grown cattle (ten cows and one bull), together with perhaps three or four calves; the stated number of goats must be interpreted similarly. The fact that the offspring are not reckoned in the bridewealth proper means of course that their number is less significant and less memorable, and hence the fittest subject for haggling or evasion in the event that the bridewealth has to be returned. The distinction between *nyaika* and *emebiara* also concerns the laws about replacing bridewealth animals which died after transfer.[2]

Like the inclusion of goats in the bridewealth, the non-counting of calves and kids seems to be a fairly recent development, though probably older than European influence. Elders ascribe its origin to a time just before or perhaps just after the coming of the Europeans; they say that it developed as a means of evasion provoked by a native attempt to reduce the bridewealth rate. Up till that time (about the first decade of the twentieth century), it is said, all female animals had been reckoned as *nyaika*, but now fathers began to demand the extra 'milk' (i.e. offspring) in order to make up for the reduction in the number of cows without an overt breach of the law. In some of the more remote of the conservative districts, calves are even now counted as *nyaika* and not as *emebiara*.[2]

5. The bull included with the bridewealth, too, serves a rather equivocal function. No bridewealth payment would be considered complete without it, but it seems to constitute a compulsory 'gift' to the bride's father, not a part of the *nyaika* herd given to 'replace' the bride herself. It is known as the 'apron bull' (*eeriy'egesicho*). Traditionally the bride's father would slaughter it to make himself a new *egesicho*, the apron of hide that formed part of the dress of elders in pre-contact days. In modern times, as we shall see, it is sometimes supplemented by the gift of a greatcoat for the father to wear.

[1] More material on the bridewealth rate is included in a paper on 'Bridewealth Limitation among the Gusii' which I hope to publish (in *Two Studies in Applied Anthropology in Kenya*).

[2] See chap. IV.

B. The Customary Gifts, Sacrifices and Entertainments

The outlay of livestock and other forms of wealth in connection with a marriage considerably exceeds the amount of the bridewealth proper, for in addition to this primary legal obligation there exists a no less binding social obligation as to entertainment and the exchange of gifts. Each occasion for presenting a gift or killing a beast is well-defined in regard to donor, recipient, nature of gift and time of giving.

Although only the wealthiest and most lavish can afford to run the whole gamut of the specified marriage gifts and entertainments, other people do not simply omit items, but use a convenient device of telescoping. When several gifts are due to the same recipient, one may be made to do duty for two: thus the donor of a bull of *omoyega* (p. 18) explains that it also represents his bull of *amaikanse* (p. 18) and so forth. Because of this telescoping, the following list of customary gifts and entertainments is not to be taken as representing the actual outlay in connection with a typical marriage.

The more detailed analysis of these gifts belongs with the study of kinship relations, but there are reasons for mentioning them in a study of bridewealth. They must for instance be considered together with the bridewealth from the economic point of view, when we have in mind such questions as the effect of a marriage on the family's livestock resources. Furthermore, in fulfilling their function of establishing and maintaining friendly kinship relations, these gifts and entertainments have an important bearing on the bridewealth transaction itself. Friendly relations between the in-laws have traditionally been the best guarantee of continued fulfilment of bridewealth obligations. Without them the realization of one's legal claims was no easy matter, since the in-laws by definition belonged to another clan—a politically distinct and potentially hostile group. The Gusii themselves still say (for instance) that unless a mother sends the proper food gifts to her married daughter, 'father will not easily get cows replaced when they die'. Viewed in this light the institution of reciprocal gifts may be called an outer line of defence for the bridewealth system whose proper functioning it helps to secure.

The following list brings together, for the sake of convenience, many diverse elements in the customary marriage outlay, ranging from the obligatory provision of beasts for essential sacrifices to the optional presentation of personal gifts. All are however associated with one of two stages in the marriage proceedings: either with the *egechabero* ('honeymoon') period which follows the initial transfer of possession of the main bridewealth, or with the *enyangi* celebration, which follows the final transfer of the remainder. We shall list them under these two main headings and indicate the broad distinction of purpose to which this classification seems to correspond.

1. *Egechabero cycle*

(a) *Apron bull* (see p. 16). This bull, which will be received with the first main instalment of bridewealth, may subsequently be used by the bride's father for the feasting of the bridegroom's father at 'discussion' (see No. 2. (a) below); otherwise, whenever he does slaughter it, he should return one hindquarter to the bridegroom.

(b) *Hen of dew.* The bridegroom rewards the young men who bring home his bride for *egechabero* by killing for them a number of hens—the first of these being the 'hen of dew' (*engoko ye'rime*),—or a he-goat if he can afford it.

(c) *Bull of omoyega.* During *egechabero* the bridegroom must slaughter a bull and send the best part of the meat to the bride's parents. He keeps for himself and his friends only one foreleg and the breast,—the traditional portion of young men of warrior age. Four such young men are chosen to carry over to the bride's home the three remaining legs, the head, the skin, intestines and kidneys.

(d) *Goat of laughter.* Traditionally a party of the bride's girl friends would visit her at the bridegroom's cattle-village[1] during *egechabero*, each bringing a present of beer. On the evening of their arrival (the visit was an overnight one) the bridegroom would slaughter for them the 'goat of laughter' (*embori ye maseko*) or 'sharpening the teeth' (*egeticha maino*).

(e) *Bull of amaikanse.* On the next day he might slaughter for them the bull of *amaikanse*; its two hind-legs and its hide would be sent to his bride's mother.

Both these customs became obsolete in the 1920's with the suppression of the semi-permanent cattle-villages in which young bachelors formerly used to spend their days away from the supervision of their elders. Neither of the two was strictly obligatory, but they provided a young man with a welcomed opportunity of showing off to please his bride. Fathers complained of their sons' irresponsible manner of wasting animals in this way, and the practice died a natural death with the enforced return of the young men to their home villages.

(f) *Exchange of foodstuffs and grain.* From time to time during *egechabero*, the bride's mother must send the young couple a basket of the staple porridge (*obokima*), together with a large calabash of soured milk—one of the most highly esteemed forms of 'relish'. These gifts, which should be sent at least three times during the period, are carried over by young women of the bride's native place, since the customs of avoidance preclude a mother from visiting her daughter in person during the

[1] See Introduction, p. 1.

first year or so of the latter's married life. Each time the basket of porridge is received and emptied, it must be filled up with finely-threshed grain (*oborabu*) as a return gift to the mother. A little of the milk must also be returned in the calabash in which it came; 'if all the milk were taken the parents would say the young ones were wishing poverty on them' (*obotaka bagotoretera*).

(g) *Personal gifts to the bride.* During *egechabero* a man is expected to make gifts to his bride. Nowadays the usual form of gift is a few shillings or a necklace. Among the southern Bagirango (location of South Mugirango) and the neighbouring Makora clan of the AbaNchari (Wanjare location)[1] it has become common practice to give the bride a more considerable sum of money, sixty or seventy shillings being not unusual.

The provision of new clothes for the bride is a disputed point. Traditionally the wife's new skin apron had to be provided by her husband (see below No. 2. (f)). Girls nowadays pester their bridegrooms to buy them new cotton dresses; in case of Christian marriage the husband may also have to provide a long white wedding-dress. The bridegrooms, supported in some cases by the missionaries, often contend, however, that the duty of providing the wedding-dress and other clothes rests with the girl's parents.

(h) *Bull of egekobo.* At the end of the *egechabero* month the bride returns to her parents' home with a party of young men from the bridegroom's place. Her parents must then entertain the young men all night and kill for them the bull of *egekobo*. This is said to be reciprocal to the *omoyega* bull (No. 1. (c) above).

2. *Enyangi cycle*

The following are to be provided by the bride's family :

(a) *Bull of discussion.* The discussion and final agreement about outstanding bridewealth claims, which has to take place before *enyangi* is held, is marked by the killing and joint eating of a bull, provided by the bride's father. The 'apron bull' (No. 1. (a) above) is often used for this purpose.

(b) *Goat of enyangi.* A central feature of the *enyangi* ritual is the sacrifice, on the second night, of the goat of *enyangi*; this is a she-goat provided by the bride's father.

(c) *Enyangi celebrations.* The *enyangi* ceremony itself is a recognized occasion for display of wealth and hospitality by the family of the bride. Gusii say,

[1] These are among the most Luo-like of the 'Masaba' Gusii.

'When we make *enyangi* for our daughter we don't want a small poor *enyangi*, we want a great one that people will talk about for a long time afterwards.' Thus they find it natural to explain the delaying of *enyangi* in individual cases by saying that the bride's parents have not yet been able to save up enough grain.

The provision for which the bride's family are primarily responsible is the supply of beer and staple porridge for the two nights' entertainment, the meat being provided by the bridegroom (see bull of *egetaorio* below, No. 2. (e)). The scale of the *enyangi* celebrations may be gauged from the fact that thirty pots of beer is thought a reasonable provision for such an occasion, while for an ordinary sociable beer-drink four to six pots is an adequate amount. Apart from this quantity, which the bride's mother has to brew, assisted by other women of the homestead and by the bride herself, some extra supplies may be counted on in the form of 'helps' (*ebitoro*), brought along to the celebration by the wives of near paternal kin.

The following are to be provided by the bridegroom's family :

(d) *Bull for ritual garments.* Before *enyangi* the bridegroom must provide a bull from whose hide a special functionary will make his *enyangi* head dress and jacket—the *ekiore* and *esumati*; these garments are obligatory for *enyangi*.

(e) *Bull of egetaorio.* The bridegroom has to bring with him the bull which is slaughtered on the first night of *enyangi* (*egetaorio*), some parts being divided ceremonially among the important guests, and the remainder eaten up by the crowd of visitors who attend on such occasions.

(f) *White goat for sacrifice.* The bridegroom has to provide a white he-goat to be sacrificed at his place three days after the ceremony. The sacrifice is connected with sanctions against adultery. Traditionally the skin of this goat must be made into the long apron of skin which the wife will now wear in place of the short apron affected by young girls. The left hindleg, stomach and small intestine must be taken by the bride to her parents, the *ekebirichi* piece (consisting of tail and three lowest ribs) must be given to the *enyangi* 'witness' or 'best man' (*omong'wansi*).

(g) *Goat or cow of heat.* The mother of the bride is entitled to one animal 'of heat' (*ye riberera*), either a goat or a heifer, ostensibly to recompense her for the heat and exertion of the *enyangi* nights when she sat up over her fire boiling water for the guests' beer. If this claim is not met out of the bridewealth itself it can be made against the bridegroom.

(h) *Goat of the sister.* The eldest sister of the bride is entitled to claim one goat from the bridegroom at the time of *enyangi*. She cannot get it 'for nothing', but has to 'deserve' it by bringing a gift of two pots of beer.

Thenceforward she must keep up a polite sequence of visits and gifts, otherwise the goat may be reclaimed from her by force.

Some elders say that the gift of a goat to the bride's eldest sister is, like the animal 'of heat', a recompense for helping in the *enyangi* celebrations, but it is usually said to be given 'for love' or 'because she was like a mother to the bride'.

(i) *Goat of the grandmother.* The maternal grandmother of the bride is entitled to claim one goat from the bridegroom at the time of *enyangi.* If she is dead, her son (the bride's *mame*, maternal uncle) has a rather doubtful claim.

In those lowland districts where *enyangi* is not necessarily included in the marriage proceedings, the gifts of goats to the bride's grandmother and sister are made at the time of completing the bridewealth payment and fetching away the bride. It is in these districts, too, that the 'modern' gifts of greatcoats, blankets, and so forth have come into vogue. These have no counterpart in the orthodox districts.[1]

(j) *Modern forms of gift.* The following practices seem to be almost confined to the tribe of southern Bagirango (South Mugirango location) and the neighbouring Makora clan of the Nchari tribe.

(i) *Greatcoat.* The bride's father may demand a greatcoat from his son-in-law ; if the two men agree, the gift may take the alternative form of money for the father-in-law to buy himself a coat (40*s.* upwards).

(ii) *Labour.* When the young men come to fetch the bride her father may demand that they stay for a few hours to help with men's work that has to be done on his land, e.g. clearing bush or pulling up thatching-grass. This is definitely an innovation of the past decade or two.

(iii) *Blankets and cooking-pot.* The bride's mother may demand a blanket and one or more cooking-pots, and if these are not provided the equivalent in money should be given instead.

[1] A fuller account and analysis of the *enyangi* gifts can be found in my paper on 'Privileged Obstruction of Marriage Rites among the Gusii', *Africa*, April 1950.

C. Functions of Customary Gifts and Entertainments

The practice of presenting gifts and killing animals during *egechabero* must be viewed in connection with the probationary nature of the *egechabero* period, which follows the initial transfer of bridewealth and precedes the final tying of the knot by *enyangi*. We have seen that at the conclusion of *egechabero* the bride would be entitled to ask her father to break off the match, or the bridegroom to demand his cattle back, if reasonable objection could be stated. Generally speaking, it is clear that the most likely source of threats to the stability of the marriage at this stage will not lie in the sphere of cattle claims: for these have been brought to a temporary equilibrium (at the cattle-view) and not yet reopened for final settlement (at the 'discussion'). Indeed, if such equilibrium had not been reached, the bride's father would not have allowed her to begin the *egechabero* at all. The specific need of the *egechabero* period, therefore, lies in another field: it is the need to provide against failure in the twofold human relationships on which the success of the marriage will depend—that between husband and wife, and that between their respective family groups. In this twofold process the gifts and the killings of beasts play a distinctive part. While the husband seeks to win the bride's favour by presents of clothes and money to herself, and by hospitable entertainment of her friends, the prospective in-laws (*abako*) are paving the way for friendly relations by reciprocal exchanges of gifts and courtesies. In one of these—the exchange of porridge and milk against grain—the wife's family take the initiative; in the other the initiative comes from the bridegroom, who sends his parents-in-law the meat of the *omoyega* and *amaikanse* bulls, in return for which they will entertain him and his companions with the bull of *egekobo*. That the initiative should be divided in this particular way is symbolically appropriate: grain and cooked food belong to the woman's sphere of life, cattle and meat to the man's.

The marriage gifts (as distinct from slaughterings for entertainment) are not directly reciprocal. They are said to be for love; a personal due from donor to recipient in virtue of the kinship or other relationship in which the parties stand, without consideration of past or future return. However, the bestowal of gifts and courtesies 'for love' has itself a reciprocal element as acknowledgement for past favours, or solicitation of future favours; and the custom is quite consciously explained in these terms by the people themselves. The gift of the grandmother's goat for instance, is explained as a return for past favours: 'the old woman was kind to her granddaughter when she visited her as a child'. The hope of more favours to come is involved for instance, in the gift to the bride's sister—if the expected visits (each with its gift) do not ensue, the goat can be recovered; at the same time, the gift acknowledges the sister's help given at the time of *enyangi*.

The slaughterings of animals, on the other hand, are connected in terms

of direct reciprocity, so that a Gusii, when asked why the bride's father has to provide the 'bull of discussion', finds it natural to reply 'because the bridegroom's family have already slaughtered bulls for him during *egechabero*'. But if reciprocal giving is one keynote, joint enjoyment is another. It will be seen that with a single minor exception ('hen of dew') all the meat killed for enjoyment (as distinct from animals slaughtered for ritual purposes) has to be shared by people of both sides, i.e. by kinsfolk or friends of both bride and bridegroom. Either a joint feast is held, or parts of the meat are sent over to the absent party. In at least one instance, that of the bull of discussion, Gusii themselves will explain that the joint eating of the beast signalizes mutual agreement. Apart from such symbolic meanings there was a practical significance. Whenever a man entertained the girl friends of his wife among the young warriors of his own cattle-village or homestead, or when her parents in return entertained his friends with the bull of *egekobo*, young people of what might be hostile clans were being brought together in common festivity, not only as present comrades but also as potential spouses—for wedding festivities are traditionally the great opportunities for young Gusii people to strike up acquaintances leading to marriage. To appreciate the full significance of these joint celebrations we have to remember that the *abamura* who meet there are some of the very warriors who would do the actual fighting in case of hostilities between their respective clans.

Though elders are ready enough to recognize *enyangi* as an occasion for display, they have never fully accepted the similar construction placed on *egechabero* by the young men. We have mentioned that before the suppression by Government of the cattle-villages in the 1920's the provision of entertainments and gifts during *egechabero* was a constant bone of contention between fathers and sons. Fathers complained that during *egechabero* merrymakings their sons would recklessly slaughter one after another of the family livestock which they were supposed to be tending. This conflict assumed considerable proportions in Gusii eyes. Elders nowadays will often say that the reason why they did not more strongly resist the suppression of the cattle villages was 'the trouble we used to have with our sons slaughtering beasts there without our approval, to entertain their girls'. The young men's tendency to excessive display during *egechabero* might receive a further stimulus from the desire to ensure a really handsome *enyangi* later on: generous entertainment during *egechabero* ought to be reciprocated by equal lavishness at *enyangi*.

In connection with the second cycle of gifts, consisting of those associated with *enyangi*, we have to recall that at this stage—in contrast to that of *egechabero*—the marriage and the primary in-law relationships are firmly established. The question is no longer one of paving the way for friendly relations between in-laws, but of maintaining the personal bond after the *enyangi* has ceremonially cut off the wife from her own lineage. Particularly significant are the presents of goats to certain members of the wife's non-agnatic kin—the sister and the maternal grandmother or her son—since these extend the network of give-and-take across the bounds of two more

clans, and thus cover a wider field than does the distribution of the bride-wealth itself.

The rules for return of customary gifts in case of divorce illustrate their function of maintaining friendly kinship relations. If the marriage is annulled in the traditional way [1]—i.e. if the entire bridewealth is returned, and the husband does not keep any of the children—the husband can demand back everything he gave: the very clothes with which he provided the woman during *egechabero* must be replaced by her father. (The only exceptions are gifts to the bride's mother, such as the cooking-pots—a man would be 'ashamed' to confront his mother-in-law in such a cause.) If however the wife is divorced under the new law so that part of the bridewealth is not recovered and she leaves a child or children behind her, the gifts are not to be returned. 'We do not demand any gifts back in that case, because we want the woman's family to be good to her children; the grandparents should be kind to their grand-children, and the *mame* (mother's brother) to his *abaigwa* (sister's children).' Putting the same idea into a slightly different form, a Gusii will sometimes say that gifts are not returnable in such cases because 'when one keeps the children the *oboko* (in-law relationship) is not broken'.

[1] See p. 52 *et seqq.* below.

CHAPTER III

ASSEMBLY AND DISTRIBUTION OF BRIDEWEALTH

Interrelation of 'Assembly' and 'Distribution'

BRIDEWEALTH assembly and distribution take place primarily within the individual or joint family, by which I mean the group consisting of husband, wife or wives, and their children. This constitutes the circle within which normally the bridewealth used by a man is collected together and the bridewealth received for a woman is shared out. In fact, 'assembly' and 'distribution' in the Gusii manner are hardly more than two names for the same process. Since the greater part of the bridewealth brought in by the women of such a family is used in marriage by the men, the assembly and the distribution alike consist mainly in the father's method of allocating between his sons the cattle received from the marriages of his daughters or earned by the labour of his wives.

Gusii custom was and is fairly summed up in the version that the people themselves generally give : 'A man gets cattle from his father when he marries ; a girl's cattle are received by her father.' Relatives outside the family as just defined may be participating because rights or obligations have passed to them by inheritance, but if we exclude these it must be said that the part played by the wider kin is insignificant.

We shall therefore deal first with the rules governing allotment of bridewealth within the family as defined above—rules which determine at the same time the mode of assembly and that of distribution. After this we shall discuss the remaining aspects of distribution. These may be said to define also the remaining aspects of assembly, in so far as they are naturally circular processes, if we look at them from the long-term point of view. The same custom (for instance) that obliges a man to pay a heifer of *emesuto* from his sister's bridewealth entitles him to receive a heifer of *emesuto* (or one of its offspring) from his mother's bridewealth, and so on over the whole range of such rights and obligations. But these circular processes operate only—as it were—on the periphery of the marriage exchange, dissolving away the edges of the bridewealth that is transferred in an individual marriage, but leaving a solid core to remain in undisputed possession of the receiving family. Hence the bridewealth really is, as the Gusii term *nyaika* implies, a 'replacement' for a woman. The proportion of daughters to sons in the individual family is generally the factor that determines plenty or poverty in cattle.

A. Rules of Allotment of Bridewealth within the Family

The allotment of bridewealth within the individual family is normally the function of the father. But the father, though he directs and co-ordinates all matters connected with bridewealth, is not free to act at his own discretion. He is bound by well-known rules, which may be broken only in very exceptional cases—for instance, if a son behaves so that the father punishes him by withholding what would otherwise be his due (even then, the son is expected to be reinstated in due course as the reward of submission). The father has free scope only in arranging for his sons to help each other with loans. Here his legal right of dictation may be rendered invalid in practice by the play of personalities within the homestead.

If the father, the natural head of the family, dies too early to complete his task of allocating the bridewealth among its members, the responsibility for enforcing the known rules passes to his brothers or other related elders, until the eldest son is old enough to take it over.

The father's discretionary right of enforcing loans between his sons, however, is evidently an attribute of his kinship status, for it does not pass on to anyone else. Whoever takes his place after his death applies only the known law. The Gusii law of inheritance—which deals mainly with cattle, the chief form of heritable wealth—therefore consists of little more than these same rules of allotment of bridewealth among the family, in the rigid form into which they crystallize upon the father's death.

From the nature of the conception of *egesaku*—the lineage that can be founded only by paying bridewealth for a wife—arises the chief sanction for the father's just allotment of bridewealth between the various male members of his family (including himself). The temptation to engross an undue proportion for himself or for one favourite son is not so strong as it might appear because the conception of *egesaku* extends to all those generations claiming legitimate descent from the founder. A man's interest in his sons' marriages is scarcely less direct than that of the sons themselves, since in raising their own *ebisaku* they will also be increasing that of their father's, whereas if none of them can raise an *egesaku*, the father's likewise will soon die out. Hence it rests with the father to see that his own 'name is not lost' by securing to as many sons as possible the cattle without which no *egesaku* can be carried on. Moreover, should he fail to do so, he and his may suffer under the vengeance of the spirits of any sons who happened to die unmarried through his fault.[1]

It is a corollary of the importance attached to *egesaku* that the Gusii believe that 'cattle should not die for nothing'. The precious asset which

[1] It is as an apology for failure to provide the marriage-portion that some elders explain the special rite observed at the funeral of a bachelor, that of throwing onto the grave a stick from the 'woman's side' of his bed, with the words, 'This is your wife'.

alone can secure the lawful continuation and increase of the lineage ought not to be left idle, particularly since it is felt that a herd is more likely to die out than to multiply with the passage of years—a feeling that still persists to-day in spite of the decrease of risks from epidemics and raids. Hence if the person rightfully entitled to certain bridewealth cattle is not in a position to use them (e.g. by reason of youth or of absence) the animals should not be kept waiting for him but should be 'borrowed' meanwhile by another member of the family. In considering the following rules of priority, particular care must be taken to distinguish between the ultimate right to bridewealth on the one hand, and the temporary right of user on the other. The right to 'borrow' bridewealth is itself a legal right, governed by its own set of legal rules ; it is in fact almost as firm a right as the ultimate right ; but it can never extinguish the latter. All Gusii are quite clear in their minds about the difference between 'borrowing' bridewealth and using it in one's own ultimate right, even though they may not always make the distinction explicit when discussing bridewealth law or cases.

1. *The rules of priority*

(a) *Priority of bachelors.* A bachelor's demand for cattle to marry his first wife takes precedence over a married man's demand for cattle for a junior wife. This is of course an expression of the principle of securing to every man his own *egesaku.*

(b) *Seniority.* Both sons and daughters should marry in order of age. Unless there are exceptional circumstances, e.g. chronic illness, a man is never entitled to marry before his elder full-brother. Only to a lesser extent is he debarred also from marrying before his elder half-brother : this restriction, being bound to conflict with the principle next to be stated—the independence of 'houses'—can be upheld only through the making of loans.

The marrying of daughters as well as sons in order of birth means that the bridewealth received for the eldest daughter is well known to be reserved for the eldest son, that of the second daughter for the second son, and so on. Where the father exercises his privilege of marrying with the eldest daughter's bridewealth,[1] this will of course mean that the eldest son has to use the second daughter's, and so on. The son for whom a particular daughter's bridewealth is reserved is acknowledged to have a special interest in the marriage of that daughter ; he may be asked to give his consent in case she wishes to divorce her husband, and it is he who will later have to meet her son's claim for an *emesuto* heifer.[2]

(c) *Inalienability of bridewealth from the 'house': independence of 'houses'.* In no circumstances can bridewealth animals be permanently alienated from the 'house' which produced them. A 'house' in this context means the

[1] See p. 29.
[2] See pp. 33 *et seqq.*

group consisting of one wife together with her sons and daughters. To it belongs of right all the bridewealth received for those daughters, as well as any cattle added through the labour of the mother and unmarried daughters. Any transfer of cattle or goats from one house to another is in the nature of a repayable loan. The claim to repayment can never die out, so long as there exists an actual or potential male representative or heir in the creditor house. 'A bridewealth debt is a piece of dried meat (*ekemoro*), say Gusii: it keeps for any length of time and never goes bad.' The claim can lapse only if the creditor house becomes extinct; i.e. if no sons of that wife are alive, nor any descendants of theirs in the direct male line. Even then it may be recovered if a male heir is born to the widow of any male member of the house, no matter how many years have elapsed. When a house becomes extinct its claims and its obligations are transferred to the house which inherits from it under the recognized rules of the law of inheritance.[1]

The principle that bridewealth cannot be alienated from the house results in the independence of houses as property-holding units. In the polygynous family assets and liabilities cannot be simply pooled; a deficit of bridewealth in one house cannot be made good by a surplus in another, except through the expedient of a loan. Hence, if the loan is impracticable (see below No. 5) it may not be possible to follow out the principle of seniority, according to which it is preferable for sons to marry in order of age regardless of the house to which they belong.

Furthermore, it should always be remembered that debtors and creditors, where bridewealth loans are concerned, are not individuals but houses. The individual borrower or lender will naturally be the person expected to act when the debt comes to be settled, but his death or absence makes no difference to the indebtedness.

(d) *Linking of houses.* The successive pairs of houses 'belong together'—the first with the second, the third with the fourth, and so on—in a way which gives each a preferential right for assistance from its partner, and makes it the heir in case the other becomes extinct. For instance, if there are sons in both the first and the third houses who are in need of a bridewealth loan, and if the second house is able to lend, the loan must be made to the first house (which is linked with the lending second house) and not to the third. If there is an uneven number of houses the last three are considered to be linked together, but the middle one of the three ought to act as intermediary in any bridewealth transaction between the other two.

(e) *Enforcement of loans: the father's powers.* The temporary transfer of bridewealth from one house to another by way of loan is made at the instance of the father, and is theoretically enforceable by him so long as it does not conflict with known principles such as the linkage of houses. Here, however, the legal theory—which would allow nobody to contest the father's right—is more stringent than actual Gusii practice. It is by no means certain that

[1] See Chap. V (B).

a husband will actually be able to force one house to lend to another if the wife in question resists, although her resistance might be severely condemned by general opinion.

(f) *Respective claims of the father and his sons.* The father is theoretically entitled to use the bridewealth of the eldest daughter of each or any house in order to obtain a new wife for himself. He is not allowed to use in this way the bridewealth of more than one daughter in any one house ; nor does the right apply in the case of a girl who is the only daughter of her house, unless she has no full-brothers.

In accordance with the principle that bridewealth cannot be permanently alienated from the house which produced it, the remarriage of a father with his daughter's bridewealth establishes a debt. The house of the new wife is indebted to the house by which her bridewealth was provided (or, if that becomes extinct, to the house next in order of succession). In practical terms this may mean that a son of the lending-house marries with bridewealth received for his young half-sister ; but if this simple solution does not fit the circumstances, the claim will persist into the second or third generation and may give rise to prolonged litigation.

The exercise of this right of the father's is deemed to be subject to consideration of equity. If the father's own wife is no longer capable of bearing children he 'ought to' re-marry, even if this means keeping a son waiting. Perhaps the commonest type of Gusii polygynous family comprises two wives one of whom is a whole generation older than the other. If the father is a widower, especially a comparatively young one, he has a strong prior claim, and may even be considered justified in using for re-marriage the bridewealth of a younger daughter, to which he is not strictly entitled. In other cases the claim of a still unmarried son is likely to be held superior to that of the father. If surplus bridewealth became available after all sons were married, the question of priority between father and sons would depend on their relative ages, the number of times each had already married, and similar personal considerations.

(g) *Special rules applying to 'cattle of saving'.* Cattle acquired in other ways than through the marriage of a female member of the family—acquired, for instance, by means of purchase, exchange or raiding—fall into a special category, that of *chiombe chia'nibo*, cattle of *enibo* or 'saving', and their disposal is governed by rules different from those applied to *chiombe chia' basubati*, cattle of girls or daughters.

(i) If the father acquires cattle or goats through his own personal effort, e.g. if he grew in his own private garden (*emonga*) the grain which was subsequently exchanged for these animals, he is free to dispose of them as he will. If he marries with them, or gives them to any son for marriage no debt is established.

It is however considered that the children of a man's youngest wife

are those best entitled to be helped out by the father with gifts of cattle of saving ; for 'the elder sons married and had wives to help them, while the younger ones were still children with their mother'. Hence there is a presumption that such personal cattle of the father should be reserved for his youngest wife's children ; and if he gives them to members of any other house, the recipients may later be faced with a claim for repayment on behalf of the youngest house. The nature of this 'debt' seems to be on the very borderline between a legal right and an ethical claim.

The father may, and often does, allot some or all of his own cattle of saving to the house of a certain wife. By letting it be known that he wishes them to belong to that wife, he is said to have 'tied the cattle for so-and-so' (*ogosibera chiombe omokungu*, to tie cattle for a woman). Once this is done, the animals are attached to that house as firmly as those produced through its daughters' marriages, and cannot be shifted from it without establishing a debt.

(ii) If a wife acquires cattle or goats through her own effort—e.g. by exchanging grain grown by herself—these animals belong to her house and cannot be shifted without establishing a debt.

If, as often happens, cattle of saving are acquired through a joint effort—e.g. of husband and wife, or of two co-wives—an attempt is made to apportion them according to the extent of the contribution estimated to have been made by each partner ; for instance the first heifer calf of a cow so acquired may be allotted to the house of the wife who produced less of the purchasing grain, the cow itself remaining with the other.

(iii) Cattle of daughters cannot be (as it were) released to become personal cattle of the father. There is however one beast given in bridewealth which is deemed to belong to the father personally. This is the 'bull of apron' given together with the herd of bridewealth cows, which is expressly allotted to the father for the making of a new hide-apron.

Cattle of saving become subject to all the restrictions governing cattle of daughters as soon as they have been once used for marriage or have been 'tied' to a house.

2. *Restrictions on the exercise of bridewealth rights*

The above principles indicate in which order male members of a family-group have the right to marry with cattle obtained through marriage of its female members. There are however certain restrictions on the exercise of this right. Two have already been indicated: the obligation of lending in cases where the ultimate right cannot be exercised immediately, and the obligation of the father to consider the equitable claims of his sons before re-marrying with bridewealth of his eldest daughter. Apart from these, the elders regard it

as a general principle that the elder brothers should try to exercise their rights in such a way as to protect the interests of the younger also.

If it appears that the incoming bridewealth will not be enough to go round, and that the younger members of the house or the family run the risk of being left portionless, the cattle which are to be used by the elder ones should be kept at home until they have increased sufficiently to provide the nucleus of bridewealth for the younger brothers. The right of the eldest sons to the first available bridewealth is in no way impaired, but they are expected to delay its exercise in the interests of the family as a whole. The fact that this principle is rapidly becoming obsolescent, besides diminishing the marriage prospects of younger sons, has meant that in case of divorce the return of the identical beasts that had been handed over is becoming increasingly difficult to enforce. It has thus dealt a blow to the method which was formerly recognized as the most correct one for return of bridewealth.[1]

A somewhat different situation in which an elder brother may be expected to waive his right of prior marriage is when the younger brother, having already acquired a 'chooser', is threatened with the loss of her and all her children unless they can be legitimized forthwith. It may be felt that the immediate gain to the family as a whole outweighs the desirability of strict observance of the rule of seniority.

B. Remaining Aspects of Assembly and Distribution

I. *Assembly*

Apart from the bridewealth of his sisters or daughters allotted to him under the fixed rules just described, a Gusii has few sources for assembling his marriage cattle. No person besides his own father[2] is obliged to help him.

The only bridewealth animal which a man is likely to receive from outside the immediate family circle is the heifer of *emesuto*, which an eldest son obtains directly from his maternal kin. The custom of giving *emesuto* is not specifically connected with bridewealth assembly. The heifer may be claimed and given at any time during the life of the claimant, either before or after marriage. Besides, it is not a kinship due owed by the maternal uncle to his sister's sons as such but a reciprocal due from the man who had the benefit of the mother's bridewealth. It will therefore be dealt with more fully where it belongs, under the heading of distribution.

'Cattle of saving' produced by a young man's own effort are, naturally, considered as his own to marry with. This category has increased enormously in importance since the days when a bachelor's principal hope of acquiring cattle for himself lay in raiding. The Gusii themselves are aware of a difference that European rule has brought about in the relative 'earning capacity' of the sexes. They say that formerly it was daughters who produced cattle, but

[1] See Chap. I.

[2] Or whoever stands in the father's place, e.g. the eldest brother if the father is dead.

now sons too acquire them since money can be earned in employment. Gusii law has not been specifically adapted to this change. A younger brother who earns his own cattle may marry before his elder brother, in contravention of the traditional rule of seniority; or he may be forced to wait by a father who insists on the old forms being preserved. It is mainly a matter of personal relations between the parties.

II. *Distribution*

We have described the rules that govern the allotment of a woman's bridewealth as between her brothers or other members of the receiving family. We now have to deal with the remaining aspects of the distribution. Although it was the main part of a bridewealth herd which normally remained to be handed on intact to the rightful user—at any rate before Europeans came, when there was less likelihood of dissipation by sale or slaughter—a few animals would have to be set aside from the herd or its offspring in order to meet customary obligations.

The more complex features of the once customary distribution are now forgotten by all but the most conservative elders. What remains in fullest force is the principle that at least one animal at some time will have to be returned to the donor's group. This obligation, however, is usually discharged out of the increase of the bridewealth, not from the original herd itself. It usually takes the form of payment of the *emesuto* heifer, which the Gusii people regard as one of their most distinctive customs, and which is still as vigorously alive as the giving of bridewealth itself.

The distribution can be discussed under three headings :

1. Portion of bridewealth to be kept 'at home', i.e. in the house of the bride's mother.
2. Portion of bridewealth or its increase to be returned to donor's group.
3. Portion to be distributed among paternal and maternal kin of bride.

1. *Portion of bridewealth to be kept 'at home'*

(a) *Cow of seeing the daughter.* Conservative elders agree that when a daughter marries, one of her bridewealth cows ought to be kept at home in her mother's house, separated from the rest of the herd which may be immediately handed on in marriage by a male member of the family. This cow is known by various names, of which the commonest are 'cow of seeing the daughter', 'of greeting the daughter', or 'of feeding the daughter'. When the beast dies one of its heifers should be kept in its place. The purposes served are twofold :

(i) To meet such further obligations as may arise in connection with the daughter's marriage. Chief of these will be the claim for a heifer of *emesuto* or of *egesango*, which should be met out of the progeny of this

cow. Further, if the woman dies and a claim arises for a 'cow of shaving' (*eng'ombe ye ritati*) or of 'feeding the children' (*eng'ombe y'okogonkia abana*), this cow can be used to meet the obligation. Another demand that may arise, and that cannot be refused, is a request by the daughter for milk to help to feed her children. She may take away as much as she likes from her 'cow of feeding the daughter', either for food or to make butter for ceremonial and everyday anointing; and when the mother visits her she should carry a gift of milk produced by this cow. 'The daughter will complain if none of her cows is left with mother. She will ask: "Who is going to help with milk for my children?" She likes to see the cow there when she visits her mother. It makes her proud to say: "That is *my* cow".'

(ii) '*Nursing up*' (*Okogoyerera*). The retention of one cow can also serve the quite distinct purpose of providing bridewealth for younger sons of the family. If several daughters have married and one cow is kept at home for each, the increase may ultimately amount to quite a respectable bridewealth herd for a younger brother.

The custom of retaining a cow 'at home' is by no means obsolete, but is definitely losing ground. It seems never to have been considered as an obligation of overriding importance. That is to say, if a brother very urgently needed the one cow for his marriage it would always be conceded to him. In that case he might find himself the person liable to meet the woman's demands for milk.

(iii) *Goat or cow of heat.* The goat or heifer 'of heat' may be claimed by the mother out of her daugher's bridewealth and kept behind by her when her son uses the rest of the bridewealth for his marriage.

Alternatively she can make the claim at the time of *enyangi*. She may then either claim for herself the '*enyangi* cow' which is given as a last instalment of the bridewealth[1] or, if this is not agreed, demand an extra heifer or bullock or goat from the bridegroom himself. Thus the custom is vague where details are concerned; like that of marriage gifts in general, it lays down definitely who has to be the recipient, but leaves the exact form to be decided according to circumstances.

2. *Return of animal to donor's group*

(a) *Heifer of emesuto.* In pre-contact days the heifer of *emesuto* was claimed by the woman herself from the brother or other relative who had married with her bridewealth. 'She went and asked her brother for a heifer that one of the cows had borne, and he gave it to her because he loved her. In those days the sister was respected and feared by her brother.' If the heifer was persistently withheld, the woman could go and tie her belt round the animal

[1] See p. 10.

of her choice: it would then be taboo (*omogiro*) for the brother to touch it for any other purpose.

In historical times the custom has changed its form a little, in that the heifer is now claimed by the woman's eldest son and not by herself. The present-day Gusii will define *emesuto* as 'the heifer we get from our *mame* (maternal uncle)'. The *emesuto* heifer can be claimed at any time. In practice it is often demanded when the eldest son is beginning to assemble cattle for his own marriage. It must be claimed from the man (if he is alive) who actually married with the mother's bridewealth, so that if her cattle were used by her own father, the claim for the *emesuto* animal will be made against him—the grandfather, not the uncle, of the claimant. In any case, the claim lies against the house which the grandfather or maternal uncle in question founded by means of the claimant's mother's bridewealth ; it can be pressed against members of this house even if the original debtor is dead.

In the highland districts a heifer of *emesuto* can be claimed by a woman's stepson if she has no sons of her own, i.e. by a son of the house which is linked with hers. In the lowland, it will nowadays be refused to any but the real son of the woman herself.

The son who received the *emesuto* heifer has to give its first heifer-calf to his next younger brother. This brother in turn should give the female progeny of his heifer to his own younger brother, and so until every brother in the house has received a heifer. Claims for replacement of an *emesuto* heifer which dies without progeny are not recognized nowadays, 'unless the parties are on good terms and like to arrange it between them'.

According to tradition the *emesuto* animal has to be a physical descendant of one of the actual bridewealth cows paid for the mother ; but practice is now laxer in this respect, since the 'cow of feeding the daughter' is not always kept at home as security for it.

The conception of *emesuto* is clearly reciprocal : the mother's brother does not owe a heifer to his *omoigwa* (sister's son) simply as *omoigwa*, but because he— the uncle—benefited by the mother's bridewealth. The relationship is outwardly symbolized during the *enyangi* ceremony. On the solemn second night the officiating priest puts down eight sticks in a certain corner of the bride's mother's hut, of which six are taken away next morning by the married couple when they set out for home ; the other two which remain behind are known as *emesuto*, and the elders explain their meaning as a symbolic pledge left with the wife's parents to remind them that 'one day somebody must come back to claim the heifer of *emesuto*'.[1]

(b) *Heifer of helping* (*egesango*). A simpler form of discharging the same obligation was the payment of the 'heifer of helping' (*egesango*, cf. *ogosanga*, to help). The first heifer-calf produced by the bridewealth cattle after the transfer could be immediately reclaimed by the bride and brought back to her husband.

[1] The derivation of the word *emesuto* is unknown and is used only in this specific meaning of the sticks put down during *enyangi*.

This custom may well be associated (as Gusii elders themselves think) with the period of extreme cattle shortage caused by the great plague of the 1890's, when the whole bridewealth might consist of one cow. Though now practically obsolete, it still crops up in litigation from time to time as the basis of some inherited claim. It has been almost completely discarded in favour of payment of *emesuto*. In the days of the cattle shortage the claimant was supposed to have the right of choice between receiving the heifer of *egesango* at once or that of *emesuto* at a later date—the two being mutually exclusive—but later the bride's father recovered the right to insist that his son-in-law wait for the *emesuto*.

(c) *Other alternatives to emesuto heifer*. In certain cases the return of bridewealth made in case of a woman's death will consist of a 'cow of shaving' (*eng'ombe ye ritati*) and/or a 'cow of feeding the children' (*eng'ombe y'okogonkia abana*.[1] Some elders say that *emesuto* cannot necessarily be claimed, if one of these other animals had been returned to the widower. For instance, (they say) if a widower with four children recovered his cow of feeding the children the eldest son would have no further claim for an *emesuto* heifer; if more than four children survived, not a cow but a heifer would be due which the eldest son would be able to claim as his heifer of *emesuto* later. These are not cut-and-dried rules that can be applied without variation; they are rather illustrations of the underlying principle as conceived by the Gusii—the principle that the recipient of a woman's bridewealth owes a sort of return: this is not bound to take place in any single way or at any single time, but must be of such a kind that her house receives the benefit.

(d) *Cow of chewing millet*. The legal obligation is fully discharged by returning out of the increase of the bridewealth either the *emesuto* heifer or the 'heifer of helping', or (in certain cases) by returning the 'cow of feeding the children'. The amount returned, however, might be increased by the optional gift of a 'cow of chewing millet' (*eng'ombe y'ogotakuna obori*). When the bride first visited her parents after the *enyangi* ceremony they might give her this cow to take home to her husband. 'After this she is permitted to chew millet in her husband's presence. A wife who has not brought the cow could not do this—it would be mocking her husband.' This custom, which is now obsolete, seems to have aimed at raising the status of the young wife in her husband's household by a display of the parents' generosity. It was rather a freewill gift than an obligation in law. Its sanctions were not legal but social, and no replacement could be enforced if the animal died.

(e) *Goat of the sister*. We have mentioned, in connection with customary gifts, that at the time of *enyangi* the parents of the bride may be expected to send one of the bridewealth goats to that sister of the bridegroom who provided the animals he has now paid them for their daughter. This is not

[1] See p. 49.

now considered as a binding obligation unless the sister attends the *enyangi* and puts forward her claim in person. It may be included here in connection with bridewealth returned to the husband's group, although the sister in question will have ceased to belong to that group because of her marriage to a member of another clan.

3. *Distribution among paternal and maternal kin*

(*a*) *Paternal kin: cow of paternal uncle.* The only known custom involving distribution among the bride's paternal kin has now entirely died out, and can be reconstructed only from the reminiscences of old men. It consisted in a reciprocal exchange : a father would give one cow from his daughter's bridewealth to his brother, on the understanding that this brother undertook to return one from the bridewealth of his own daughter. It would be rash to speculate at this stage about the functions of this dimly-remembered practice, but possibly it was no more than a manifestation of normal brotherly helpfulness, the loan of a cow to one's needy brother against a mortgage on the latter's daughter's bridewealth.

(b) *Maternal kin: cow of honey.* Better remembered is the process by which a maternal uncle of the bride may secure one cow out of her bridewealth by following out an elaborate series of exchanges and counter-gifts. The beast thus obtained is called 'cow of honey' (*eng'ombe y'oboke*), the usual interpretation being that 'the man gets this cow because of the love between him and his sister, which is sweet like honey'. Whether or not this is good etymology, what is certainly true is that the giving of the 'cow of honey' does not nowadays take place unless the parties are on friendly terms: it is not a universal legal obligation.

The mother's brother in question is the one who married with the bridewealth of the bride's mother. His right to a 'honey cow' is explained by Gusii elders as being linked in some way with his obligation to provide a heifer of *emesuto* for the son of the same sister. The cow of honey, like the *emesuto* heifer, can only be demanded once.

The bride herself takes the initiative in the complex procedure by going to her mother's brother's place on the day before the first night of *enyangi* and spending the night there. She brings him a present of two pots of beer ; when she goes home next morning she takes with her his return gift of three or five pots of beer, which are to be used that same evening at the *egetaorio* celebration. In the evening the mother's brother follows her and demands first of all a goat, the 'goat of honey'. Next day, the solemn day of *echorwa*, he asks his sister, (the bride's mother) for the cow of honey itself. This is met by a counter-demand for a bull. He must then go home and fetch a bull; if it is not a big one he will have to provide in addition a 'goat for the neck-muscle' (*embori y' esuti*). Only after slaughtering the bull—and the goat if required—at the home of the bride is the mother's brother entitled to his cow : he can enforce his right if necessary by placing his hand on the

sacrificial *enyangi* goat and thus holding up the proceedings until his demand is met.

This is not the end of the transaction. After receiving the cow the mother's brother has to send to his sister the 'goat of belt' (*embori y' orokini*)[1] which she in turn has to pass on to the bride. 'When the bride receives the goat she knows that her mother's brother has had his cow of honey. If she does not get it the bridegroom will complain, and even refuse her food, because her mother' s brother ought to acknowledge the cow he received out of the bridewealth.'

Thus the maternal uncle will have given three or five pots of beer, one or two goats and one bull, and he will have received two pots of beer, one goat and one cow. According to the Gusii scale of values he comes out of it with a slight but definite profit.

The custom is now almost obsolete, but is clearly remembered by most elders. Emphasis lies on the fact that the whole transaction depends on friendly relations. If bridewealth had to be returned because of divorce, the wife's father could reclaim the cow from her mother's brother only by friendly persuasion. The mother's brother on his part could not demand replacement as of right if the cow died without progeny.

(c) *Goat of the grandmother*. The maternal grandmother of the bride (or the grandmother's son) may also receive from the bridegroom one goat at the time of *enyangi*. This gift, which is not strictly part of the distribution of the bridewealth, has already been dealt with in connection with the customary marriage gifts.

[1] Cf. the sister's use of her *orokini* to enforce her claim against the same brother for a heifre *of emesuto*.

CHAPTER IV

THE MAINTENANCE OF EQUILIBRIUM: REPLACEMENT AND RECOMPENSE

Introductory

GUSII bridewealth law provides in various ways for the maintenance of the equilibrium brought about by an initial bridewealth transaction. When *egesaku*[1] *A* loses a woman to *egesaku B*, the balance is restored by the reverse transfer of bridewealth from *B* to *A*, but the mutual obligations do not cease with this immediate achievement of equilibrium. As long as *B* have possession of the woman (or an adequate number of her children), they are obliged to maintain group *A* in full possession of the bridewealth equivalent. Conversely, as long as *A* have possession of the bridewealth animals (or an adequate number of their progeny), they are obliged to maintain *B* in possession of the woman. In neither case does the obligation cease after *A* have passed the bridewealth on to a third party.

On this principle of perpetual equilibrium are based the laws governing (a) replacement of bridewealth animals which die or are somehow lost after transfer and (b) recompense of a husband (or his heirs) if the wife dies, goes away, or 'devaluates'.

The obligation of maintaining equilibrium in perpetuity is what chiefly distinguishes the Gusii bridewealth system from the European conception of sale and purchase. On the other hand—what seems more important—it emphasizes the strong resemblance between the marriage transaction and those other customary exchanges of animals which before the advent of Europeans took the place of buying and selling, there having been no exact counterpart of 'purchase' and 'sale' in the traditional economy. The Gusii system, placing women, cattle, goats, and grain in this order of descending value, regulates the exchange of any kind into the next less valuable kind by just the same set of principles.

A single example may be given to illustrate the similarity. In the commonest economic exchange, *A* gives one cow or heifer for several goats of *B*'s; if one of the goats thereafter dies without progeny *B* must replace it upon return of the corpse, but if the cow itself dies without progeny *A* will not give another until he receives an extra goat from *B*. In just the same way, when *A* gives his daughter for several cows of *B*'s, if one of the cows dies without progeny *B* must replace it upon return of the corpse, but if the

[1] For the meaning of *egesaku* see p. 4.

woman herself dies without progeny *A* will not give another as *riika* until he receives an extra cow from *B*. It will be observed from these two cases that while there is no constant principle for the form of liability on the death of a cow as such, the liability is determined by the rôle which the cow played in the particular exchange. The parallel to the cow in one case is not the cow in the other but the woman.

Gusii women say of themselves: 'We are bought like cattle'. What has just been mentioned is one of the lines of argument which suggest that this may be somewhere near the truth. A further discussion of this point must be postponed together with that of other significant questions. For instance, we should want to ask just how the payment of cattle is conceived to make up for the loss of a daughter, and why the arrangement needs to be maintained in perpetual equilibrium—questions that should lead to something of importance for the understanding of Gusii social structure and systems of value.

A. Replacement of Bridewealth Animals by the Donor

A debt on account of the death of bridewealth animals is (like any other bridewealth debt) theoretically imperishable. It remains unaffected by the passage of time and by the number of times the animal may have changed hands.

The responsibility extends to all the 'substitution' (*nyaika*) cows and goats, but not, naturally, to the calves and kids if these were not counted. A bull or he-goat need be replaced only if it dies within a short time after the transfer—say a few months—and if it had not meanwhile been handed on to a third party. This claim however rarely arises since what the bride's father traditionally does with the bull is to slaughter it himself to make a new skin apron.

1. *Procedure for claiming replacement*

Unless the claimant follows the correct procedure, replacement may be refused by the donor.

The donor has to be called to view the corpse, and probably takes the opportunity to enquire how the animal died and to confirm that he really is liable for replacement (see No. 4. below).

The animal is skinned, and the donor receives the hide, together with the meat or a quantity of grain or dry beer representing its value; nowadays money is commonly substituted for the latter. (It should be for the donor himself to exchange the meat for grain and have the grain made into beer; but if his coming is so long delayed that the meat starts to go bad, the claimant should do it on his behalf).

If the donor is unable or unwilling to come and view the corpse, the claimant must send him the hide and the 'meat' (i.e. dry beer). This practice appears to be becoming more and more common nowadays in place of sending the

traditional summons. If the claimant keeps the hide and meat for himself instead of returning them to the donor, he will have to give the latter instead a 'goat for the corpse' (*embori y'egetondo.*)

If the donor himself had previously received the animal as *nyaika* in bridewealth from a third party, he is not expected to provide the replacement himself, but to pass on the hide and 'meat' to the party in question. The hide and 'meat' should travel in this way all along the chain of donors, as far as the person who was the first to give the dead animal as *nyaika.* (Any member of the chain may if he wishes keep the dry beer and send a goat in its place.) The original donor is then liable to provide the substitute animal, which will be handed along the chain in the reverse direction until it reaches the claimant. The complexity of the process must have been much enhanced by the tendency for bridewealth herds to circulate more rapidly, now that they are not so commonly kept at home to increase.

2. *Natural replacement*

In certain circumstances a dead bridewealth animal is held to have replaced itself by its progeny, and no further claim can be made against the donor. Before the days of European influence a cow was considered to replace itself by either one female or two male offspring. In modern times, when bulls have acquired a greater relative value because of their new-found usefulness in trade and as plough-oxen, a man may sometimes be satisfied with progeny of one bull-calf. If he is not satisfied, he will have to return the bull-calf to the donor, as well as the skin and 'meat' of the dead cow, if he wants full replacement. Alternatively he may keep its calf, but he will then be entitled not to a cow but only to a small heifer, 'as the bull's mother' (*buna ng'ina eeri*).

When an animal dies leaving progeny which are considered sufficient replacement, the donor merely inspects the corpse and leaves the skin and meat where they are. But if the progeny also dies without leaving any 'replacement', the donor may be liable for giving a new animal after all. In this case the claimant would have to return the skin and 'meat' of both mother-cow and heifer. The claim for replacement can persist even further: if a cow *A* leaves a heifer *B*, which then dies leaving a heifer *C*, which in turn dies without progeny, the original animal may be replaced: there is no theoretical limit. At present such extended claims are met 'only if the parties are on good terms'; the practice perhaps dates from the time when a single cow might constitute the whole bridewealth.[1]

3. *Type of animal accepted as replacement.*

A dead or lost animal must be replaced by another of the same category—a cow by a cow or large heifer, a bull by a bull. But if the claim is met out of courtesy rather than as an incontrovertible due—e.g. if the animal being replaced is not the original cow but its 'granddaughter'—a small heifer may

[1] Cf. p. 35.

replace a cow. The claim cannot, as it were, sink lower than this. Only cattle can replace cattle, and no quantity of goats—still less of money or of any other commodity—will be accepted instead.

If the claim for replacement arises some years after the animals were originally given it may be somewhat reduced. For instance, if four cattle die without progeny several years after the marriage, only three need be replaced, or two might replace three. If the claim arises immediately after the marriage—say, within a year—it must be met in full. The distinction is an elastic one based on a general principle and not on a precise time-limit.

The non-replacement of bridewealth animals, if the claim is on a fairly large scale, constitutes valid grounds for divorce. The wife's father, that is, has the right to take back his daughter and marry her to somebody else, as long as he returns whatever balance still stands to the credit of the defaulting husband. The Government-sponsored Tribunals nowadays often decree the return of a wife to her father in default of replacement of cattle. But if the marriage had been completed by *enyangi* this proceeding is ruled out. The father who makes *enyangi* for his daughter gives up the power of taking her away from her husband. Claims for replacement of cattle are as valid after *enyangi* as before it, but are not to be enforced by the same kind of self-help.

4. *Responsibility for loss*

In general, the recipient of bridewealth loses his right to replacement if his own deliberate action was the proximate cause of his losing the animal. This appears to be the sole criterion : the question of 'moral' responsibility is unimportant.

Thus no replacement could be claimed if the animal was killed by the claimant, either deliberately (e.g. for food or sacrifice), or accidentally, as in drawing blood. If he kills it accidentally, 'that is his own misfortune'. But replacement can be claimed in the following cases :

(a) If the animal died through the claimant's own negligence, e.g. because of an avoidable accident which took place while he was not looking after it properly.

(b) If it was stolen, even through negligence ; 'if twenty bridewealth cattle were to be stolen on the day after the marriage, they will all have to be replaced.' The claimant will, of course, have to show that he made reasonable efforts to recapture the stolen animals.

(c) If the animal died as a result of natural calamity, e.g. through being struck by lightning. (In this particlar case the skin is not returned, as the skinning of animals killed by lightning is taboo.)

(d) If it was killed by witchcraft or other people. Elders say that if several animals were killed in this way the donor is not obliged to replace the whole number, but he should replace a fair proportion, say half.

B. Recompense for loss of a Wife

1. *Grounds for recompense*

Bridewealth must be returned, in whole or in part, if the marriage comes to an end before the husband's *egesaku* has had reasonable benefit from the wife's capacities for childbearing and for food-producing. This may happen either through the death of the wife (in which case another girl may be given as an alternative to return of the bridewealth), or through a breakdown involving final separation of the spouses. Under the Gusii system of levirate marriage, the death of the husband does not in itself mean that the wife's childbearing and working capacities are lost to his *egesaku*; this loss will occur only if and when a man of another clan pays bridewealth for the widow. Hence a claim for return of bridewealth, either through death or by the way of divorce, may be made in respect of a widow as well as of a wife.

A partial return of bridewealth, but not a legal divorce, may be enforced if the wife 'devaluates' in certain ways through illness, injury, or the discovery of her barrenness. In such case the marriage is expected to continue, and the return of some cattle is meant to compensate the husband for the partial loss of his wife's capacities.

2. *Responsibility for the debt*

Repayment is supposed to be made by the person who actually used the woman's bridewealth animals for his own marriage, not by the person who received them. Thus though the claim is usually in practice made against the father (who received the bridewealth), the father is said to 'give some cattle to his son' (who married with the bridewealth) for the latter to meet the debt.

Claims for repayment are imperishable. They lie in the first place against, the house from which the woman came, or, if this becomes extinct, against the house next in order of inheritance, so that the death of the wife's father or of the person who actually married with her bridewealth has no effect on the debt.

Similarly the death of the husband does not affect the claim of his *egesaku*. It is common to find a grown-up son claiming bridewealth owed on account of the desertion of his mother many years ago.

At any stage in the history of the debt settlement may be effected by the giving of a woman in place of cattle.

Mutual responsibilities of the two parties cease entirely when bridewealth has been returned *in full*. No claims can arise regarding the animals that have been duly returned to the donor; the marriage is dissolved, and the

original cattle-transaction is as though it had never been. On the other hand, when *partial* return only is made, because of the survival of some children, mutual reponsibilities do not cease to exist. If one of the offset animals subsequently dies without progeny the donor will have to replace it, so long as his children are alive.

3. *Recompense in case of death*

(a) *Forfeiture of rights.* The right to return of the bridewealth paid for a dead wife is forfeited if the husband (or anyone of his homestead) can be proved to have killed her himself either accidentally or deliberately.[1] A post-mortem is sometimes carried out by a native surgeon in doubtful cases. If the wife was killed by a third party the claim against her family does not arise, for it is the murderer who will have to pay her husband's *egesaku* the normal compensation which consists of a number of cattle equal to a bride-wealth payment.

(b) *Substitution of new wife.* A widower need not necessarily receive his recompense in the form of returned bridewealth: he may instead accept another woman provided for him by the family of his dead wife. This arrangement cannot be insisted on by either party as a right, but can only be made by mutual consent. The substitute wife so given is termed a *riika*, 'replacement' (for root–*ika*, cf. *nyaika*).[2]

For legal purposes the substitute wife is identical with the dead woman.[3] Her children and the dead woman's count as full siblings, that is, they belong to the same house.

The substitution cannot be suggested by the widower himself, the proposal has to originate with the dead woman's family. They often see it as a welcome escape from the burden of a cattle debt which they are unable or unwilling to meet;[4] or sometimes a girl may herself demand to be sent to care for the motherless children of her dead sister. The widower, for his part, may be glad to accept the arrangement in the interest of his children; or he may submit to it *faute de mieux*, where he knows that the bridewealth is irrecoverable in practice though not in law.

Some additional bridewealth has to be paid on account of the substitute wife. If the widower was entitled to return of bridewealth in full he will pay only one or possibly two additional cows, and perhaps the same number of

[1] Cf. The rule regarding responsibility for the death of bridewealth animal, p. 41.

[2] See p. 15.

[3] The legal identity is reinforced by magical sanctions. The girl must take care not to belie it by her behaviour, for if she forgetfully continues to address her new husband as *mokoyone* (brother-in-law) instead of *omosacha* (husband) a magical retribution will follow. Such a break apparently is taken very seriously; I was told that a girl may be sent straight home again to her parents if she transgresses.

[4] It may happen that in their eagerness to avoid repaying cattle, Gusii debtors give a substitute wife in flat contravention of the kinship laws. I know of a couple of cases—not of very recent years—of a man giving his own daughter to his dead sister's husband, although the girl was a classifactory 'child' of the widower and sexual relations between them must infringe a grave taboo.

goats. If he was entitled to partial return only, he will pay as many cattle as would have been kept back by the woman's family had the bridewealth been returned. If he was not entitled to any return at all, he will have to pay bridewealth in full, and the transaction will look rather like a new marriage.

It should be noted that the substitution of a *riika* is not the only case in which the giving of a woman is a possible alternative to the settlement of a bridewealth debt by repayment of cattle. It is the commonest, and the most precisely regulated, but in principle many other bridewealth claims—and even cattle claims not directly arising from bridewealth—can be met in the same way. A man I know of (for instance), having accidentally killed a youth and being unable to pay the father the required compensation, handed over his daughter instead to be wife to another son of the family. While such transactions can only be made by mutual consent, in themselves they are perfectly consistent with the principles of Gusii law. Whether one receives a woman, a bridewealth or compensation payment or a small girl whose bridewealth will be earned in due course, the net benefit to the *egesaku* is conceived as being much the same. From this point of view the individuality of the woman is irrelevant unless she falls markedly below marriageable standards of health or presentableness.

(c) *Procedure for claiming return of cattle.* When a woman has died and her parents (or their representatives) have come, as is proper, to wail over her grave, the widower can demand one cow as a first instalment of whatever bridewealth may be due for return. This is the 'cow of shaving' (*eng'ombe ye ritati* or *y'amatati: eng'ombe y'etukia*), for he can insist on its being paid before the mourners carry out the ritual funeral shaving. If the parents had kept behind one 'cow of seeing the daughter' from the original bridewealth this animal or one of the offspring can appropriately be given to meet the claim.

The recovery of the remainder of the bridewealth, in spite of the legal imperishability of the claim—or perhaps just because of it—may be an extremely lengthy and hazardous process. The debtor may be unable to do more than to mortgage the bridewealth of a daughter still unmarried or even unborn : or he may simply try delaying tactics with the object of ultimate evasion.

(d) *Number and type of animals to be returned: general principles.* There is a distinct tendency to restrict the amount of bridewealth returnable in case of death, as against divorce. This seems to be based partly on the considerations that the husband should already have had a certain benefit from the woman's labour, and that death after all is nobody's fault.

This tendency is shown in the rule now applied by the Native Tribunals, that when the claim arises from death, not divorce, no goats can be recovered : the husband's claim is restricted to the cows. The same idea seems to lie behind the version given by some elders who say that even a nominally complete return of the cattle in case of death should exclude one cow.

In spite of the fact that the return is supposed to be made so as to enable the bereaved husband to remarry, the system takes no account of changes that may have occurred meanwhile in the average level of bridewealth payments. This can be a serious matter; for instance, a husband who paid three cattle for his wife when that was the average level, but reclaims his bridewealth when the level has risen to fifteen, will obviously not be enabled to get another wife.

Deductions must of course be made for any animals that have died since the transfer and not been properly replaced.

(e) *Specification of animals to be returned.* Elders maintain that in former days it was considered desirable or even essential to recover the identical cattle that had been paid over as bridewealth, or the progeny of such as were no longer alive. They say that people held by this system—though realizing it was a clumsy one—because they feared otherwise being forced to accept beasts inferior to the ones they had given. The custom is now falling into disuse, partly it seems because of the increased rapidity with which bridewealth herds change hands or become dissipated through sale and slaughter. It was not (even in traditional times) applied in the case of goats.

Where the identical animals are to be repaid, it rests with the debtor to recover them from any third party to whom they may have passed meanwhile. Thus if *A* is claiming back the bridewealth he paid for *B*'s daughter, and *B*'s son has already used it to marry *C*'s daughter, it is for *B* (or his son) to collect together a herd with which he will 'redeem' (*okoboria*) the original animals from *C*; they are then returned, by *B* to *A*. *B* will not necessarily have to present the entire number of cows in order to redeem the original ones from *C*; he might (for instance) redeem a herd of 8 by payment of 5 and promise of 3.

Where the original animals are not to be returned, the debtor has to provide beasts of the same category—a cow or large heifer in place of a cow, a bull or bullock in place of a bull.

(f) *Right to return of offspring.* At one time a widowed husband was theoretically entitled to return of all offspring of the bridewealth cows, including all those born after the original transfer. This right must always have been difficult to enforce and productive of endless disputes, since there was no generally recognized way of checking the number of calves born after the transfer. The present practice of the Native Tribunals is to refuse to consider claims for offspring born after the transfer, but return of the offspring actually given with the bridewealth is enforceable at law.

(g) *The cow of spear.* When a wife dies in childbirth or through accidents of pregnancy her family are entitled to deduct one cow from the number that would otherwise be returnable to the widower. This is the 'cow of spear', (*eng'ombe ye ritimo*). Elders say it is paid because the spear (male organ) of the husband brought about the death of the woman. We may

recall in this connexion the ruling that a husband who kills his wife even accidentally forfeits his rights to the bridewealth.

4. *Specific rules governing number of cattle returned*

The exact number of animals to be returned when a wife dies depends on the number and age of the children who survive her ; but the ways in which this principle can be applied and interpreted are bafflingly numerous and mutually inconsistent. There are few other topics in Gusii law that give rise to so many contrary interpretations as this. Determining the portion of bridewealth to be returned is, like the division of inheritance between full-brothers, a legal game on which Gusii elders like to sharpen their wits.

The two main methods of assessing return, which we may call for short the 'chief's system' and 'elders' system' respectively, will be defined when we come to deal with those cases in which they diverge. At the two extremes there is unanimity ; all Gusii agree about the right to entire return in some cases, or the complete offsetting in others.

(a) *The wife who dies 'entire'*. Bridewealth must be returned in full if a wife who was still capable of bearing children dies *omogima*, 'entire'. This applies if the wife (a) leaves no surviving children, or (b) leaves children who however die later on before reaching marriageable age. In the latter case the claim for complete return comes to life on the occasion of the loss of the last child.

The completeness of the return is subject to the exceptions already mentioned. Goats will not be returned, nor offspring born after the transfer, and the cow of spear may be deducted if the woman died through pregnancy.

As we shall see, if a woman dies after she has passed the age of childbearing the claim will not arise, even if she left no children at all.

(b) *The wife who 'pays for herself'*. On the other hand, no bridewealth need be returned at all if the wife has 'paid for herself' in any of the following ways :

(i) By leaving one married son. In this case 'the *egesaku* is standing' : the lineage has a good chance of being carried on into the third generation, and meanwhile the married son is held to be capable of looking after any younger children left by his mother.

(ii) By leaving one married daughter. In this case 'you have received cattle for your daughter, with which you can get another wife—now what more do you want ?'

(iii) By 'growing old' at the husband's homestead. This in practice means passing the age of childbearing, and attaining the status of *omong'ina*, 'old mother'. Even if a woman of this age leaves no children she is considered to have 'paid for herself' by her lifetime of work at the husband's home.

In the concrete Gusii terms she may be supposed to have produced so much grain that he—with no child to feed—could barter it for cattle to take the place of those he gave for her.

(c) *Intermediate cases: the two systems.* We now have to consider how Gusii law deals with cases where the wife neither 'dies entire' nor 'pays for herself'. These are, of course, the cases where a certain number of young unmarried children survive.

Two different methods have been known and used by the Gusii for calculating the amount of compensation due to a widower in such cases. One of these assesses the compensation on the basis of how much of the woman's presumed childbearing capacity remained unused when she died. The other relates the compensation to the degree of security obtained by the husband for the continuance of his lineage. The first method, which involves simple offsetting according to the number of children, is said to have been introduced at the beginning of British rule. Elders maintain that the Government-appointed chiefs represented it to the Administration as being the native law and custom, whereas really it was an innovation of the Chiefs' own, designed to benefit wealthy polygynists like themselves. This system (whether new or not) was applied for a generation or so, until in the 1930's Tribunals were authorized to use the other system, which, instead of gradually tapering off the compensation in proportion to the number of children, sharply reduces it at the point where two children survive.

According to this view, it would appear that the change of the 1930's was a return to old Gusii practice. It should, however, be added that the other system is occasionally claimed as original native tradition by elders who can know little of the deliberations of chiefs or Administration. It may well be that both systems are indigenous and antedate British occupation. As already stressed 'the native law and custom' is not likely to be reducible in every case to a single consistent formula.

The following table, showing how Gusii elders would assess the amount of bridewealth recoverable by a widower who had paid ten cows for his dead wife, illustrates the fact that the difference between the two systems of calculation has more than theoretical significance:

No. of children surviving	No. of cattle to be returned to widower	
	'Chiefs' system'	Elders' system
One	9 cows, 1 heifer of *emesuto*	9 cows, 1 heifer of *emesuto*
Two	8 cows, 1 heifer of *emesuto*	2 cows, 1 heifer of *emesuto*
Three	7 cows, 1 heifer of *emesuto*	2 cows only
Four	6 cows, 1 heifer of *emesuto*	1 cow only
Five	5 cows, 1 heifer of *emesuto*	1 heifer of *emesuto* only
Six	4 cows, 1 heifer of *emesuto*	1 heifer of *emesuto* only
Seven	3 cows, 1 heifer of *emesuto*	1 heifer of *emesuto* only
Eight	1 cow, 1 heifer of *emesuto*	1 heifer of *emesuto* only

(i) *The Chiefs' method.* The principle that a woman does not 'pay for herself' unless the husband has had the *full* benefit of her child-bearing capacity means that the bridewealth must be returned unless she leaves him with the entire number of live children that a woman can reasonably hope to produce during a normal lifetime. Anything from about eight or nine children upwards (naturally the number is not exactly defined) would mean that a wife had 'paid for herself'; no bridewealth need then be returned except one 'cow of shaving' to compensate for the loss of the remaining years of her childbearing life.

If she left any number of children short of this, bridewealth would be returned to the widower, but a specific number of cows would be offset against the number of surviving children. Whenever possible this offsetting would take the simple form of one cow for one child of either sex. But the 'one-for-one' method could not be applied if the bridewealth had been small. For instance if three cows had been paid and three children survived, the whole three could not be offset—'because three children do not pay for a woman entirely'. In such cases another method would be applied instead: two cows would be offset for the three children, as representing a reasonable proportion of the original bridewealth.

The 'one-for-one' principle lost in usefulness in latter years for the opposite reason: at this period bridewealth payments were not too low, but too high to suit it. Thus if 16 cows had been paid and four children survived, the elders would feel that a husband was being rather exorbitant in demanding return of 12 and would often recommend that one or two extra cows be included in the offset. There seems to have been no hard-and-fast rule about this: whether or not the widower agreed to the concession would depend on the personal relations between the parties.

(ii) *The Elders' method.* The alternative method, said by most elders to represent the genuine Gusii custom of former days, goes on the principle that a woman can pay for herself without having given the *full* benefit of her child-bearing capacities, as long as she does leave enough children to ensure the continuance of her husband's *egesaku*. One child does not fulfil this condition: the fate of the lineage would hang on too slender a thread. Therefore, if only one child survives, the bridewealth must be returned, less an offset of one animal only—a heifer for a girl, a bull for a boy. So far (except in making the distinction of sex) the system agrees with the one already described; but from this point it differs, making a sudden jump after the second child. If two or more children of either sex survive 'the *egesaku* is standing'; therefore the husband need not be enabled to marry again. He will receive only one cow of shaving[1] and one cow 'for the children' (*eng'ombe y'okogonkia abana*, 'cow of suckling children', or simply *eng'ombe y'abana*, 'cow of children'). The latter is said to provide the widower with milk to feed the children who have now no mother to prepare their food.

[1] Cf. The 'telescoping' of marriage gifts, p. 17.

However, the return should still be graduated according to the number of surviving children. If four children survive, the return should be one cow of shaving; there will probably be no 'cow for the children', but the eldest son can make the normal claim for a heifer of *emesuto* to be given later. The elders say that a woman who left as many as four children 'has not died'. If there are six children the cow of shaving will still be returned but it will probably be held to represent the heifer of *emesuto* as well. These figures are approximate; some elders would say (for instance) that the claim to a heifer of *emesuto* lapses not after four but after three children, and some hold that the single animal which should be returned if six or more children survive is not a cow (of shaving) but a heifer (of *emesuto*). But though the figures vary the principle they illustrate is constant.

The cow 'for the children' may not be returned if one brother is already married; in this case he is supposed to be able to look after his juniors.

5. *Partial recompense*

In cases of sterility and other serious disability in a wife, the husband is entitled to a partial return of bridewealth—say three or four cows out of a payment of ten or twelve. If any claim for return subsequently arises, through death or divorce, the number repaid in compensation for sterility or disability will have to be deducted. It is a kind of advance part-payment of a debt which perhaps may never be claimed as a whole.

(a) *Sterility*. A woman will, of course, be suspected of sterility if her co-wives bear children and she does not. If she is an only wife other steps have to be taken. In such a case another man will be privately asked to play the part of 'warmer of the house' (*omosoi nyomba*) and try to make her pregnant. Alternatively, or at the same time, the husband will become 'warmer of the house' to a widow in order to discover whether his wife's childlessness is not in fact due to his own sterility.

When a wife's sterility is considered to be proven, her husband loses the right to divorce her on his own initiative. He can claim the few cows which are considered his due in compensation for the loss of children, but he has to keep the woman herself, unless she deserts or gives some other provocation.

(b) *Serious disability*. On the same principle partial compensation might on occasion be claimed for a wife who through illness or injury became totally unable to work or bear more children; not, however, if the husband himself had been responsible for the injury.

6. *Recompense in case of divorce*

(a) *Definition of 'divorce'*. In the period between the initial negotiations of the go-between and the final celebration of *enyangi* there lie certain recognized points at which a marriage may be terminated at the request of one or other party. At the earlier stages we may speak of 'breaking off the match' rather than of 'divorce' proper, though the transition is not clear-cut. When the last of these recognized opportunities has passed it is still possible for divorce to take place if either party can persuade the elders of both families of the seriousness of his or her complaints. After *enyangi* divorce acquires additional solemnity and must be signalized by a semi-ritual act—the cutting of the thongs of the woman's left ankle-ring by means of the man's spear.

Divorce, in the sense in which I shall use the term, must be distinguished from mere separation of the spouses. It is by no means uncommon for a married couple to be parted for many years—for instance if the wife has deserted her husband for a lover—without the marriage being formally brought to an end. The crucial difference between a separation of this kind and a divorce proper is, of course, that separation as such does not affect the rightful allegiance either of the woman herself or of any children borne by her at any time. Divorce proper is a legalized process to detach the wife and children from the husband's *egesaku*. Its essential feature is the return of bridewealth.

The opportunities for breaking off a match in the early stages constitute a social recognition of something unrecognized in legal theory, namely the importance of personal consent on the part of husband and wife themselves. While legally speaking there is nothing to prevent a Gusii father from forcing his child of either sex into a marriage with any partner of the father's choice, in practice the traditional marriage preliminaries demand that the son or daughter be induced to give at least an appearance of consent.

If a girl is unfavourably impressed by her first sight of her suitor she is traditionally entitled to dismiss him at the very outset. It is when she meets him outside her mother's hut on his first formal visit [1] that she may turn him away with the formula 'leave our front yard' (*karwe isiko rieto*). Once he is inside she has to bring him some gruel prepared by herself as a token of her willingness to carry on with the match. If the suitor himself is dissatisfied he is not supposed to express his reluctance so frankly but to wait till he gets home and then privately request his father to drop the negotiations. A second opportunity for withdrawal arises after the feast of 'eating at the place of the in-laws' when the girl and the suitor hear the views of their respective friends who attended the feast. I am told that an adverse verdict would be taken seriously. At this stage, too, the girl's mother can put in a word if she was not satisfied with the suitor's behaviour towards herself. It has already been mentioned that at the conclusion of *egechabero*—the 'honeymoon' period after the main cattle transfer—a father must seriously consider his daughter's views about returning to her husband. Gusii say

[1] See p. 6.

that she must go back 'by herself', not under compulsion from anybody, and that the gifts of food she will carry with her are tokens of her willingness. This is in marked contrast to the convention that required her to simulate resistance when she first travelled the same road some weeks previously.

It goes without saying that the giving or withholding of consent at any of these stages may be decisively influenced by parental pressure. But the fact remains that consent is the social norm. A Gusii father knows that he would risk a measure of social disapproval if he insisted on a marriage without obtaining at least the decent show of consent from the child concerned, or if he obstinately refused to allow a divorce for which there were known to be strong personal reasons.

A rather different opportunity for calling off a marriage is one that may arise about the time of *enyangi*. If a husband suddenly finds himself unable to pay over the necessary final instalment of bridewealth when the wife's people have made all their preparations for *enyangi*, he may be set aside in favour of another man who is able and willing to pay over the whole bridewealth at once. The Gusii term for this procedure is 'cutting in' (*okonacha*), and the explanation I always had from informants was that 'it would be a pity to waste all the beer and food that had been got ready for *enyangi*'. Though I have come across only one case in my own experience, the idea of 'cutting in' seems to be quite familiar in principle to most Gusii.

(b) *General principles*. When a woman is lost through divorce, the return of bridewealth may be on a more generous scale than it would have been in the case of her death. If she is lost 'entire' not only the cattle but the goats and even the customary marriage-gifts will have to be returned. The elders justify also this distinction not only by pointing out that 'death is nobody's fault' but also by the fact that the father of a divorced woman will be able to marry her off to another man and get all the 'profits' of her marriage over again.

Divorce law has altered radically since the days before British Administration. Traditionally the only possible form of divorce was a complete annulment of the marriage. The husband had to choose between the cattle and the house, i.e. his legitimate children by this wife. To recover the former meant to give up the latter entirely. The modern system is a compromise which allows the husband a partial claim on both bridewealth and children. As interpreted by the Administration, the new system is undoubtedly more humane, particularly from the point of view of the woman. In achieving this advance the law has inevitably had to sacrifice some of those features that formerly helped to guarantee the stability of marriage. Like any other divorce law, it has had to admit the incompatibility of two desirable objectives: on the one hand a humane treatment of individuals unhappily married, on the other hand the preservation of the strength and inviolability of marriage-bonds as such.

Something must first be said about the main differences between the old and the new divorce laws.

(i) *Traditional divorce.* The traditional law was based on an unshakeable conviction that a woman will not stay away indefinitely from the place where she has left her legitimate children. If a wife went away to another man, leaving even one child behind her, the husband would normally make no attempt to recover his cattle. His best course was to bide his time, knowing that when she eventually returned she would have to bring with her any children that she had had meanwhile by other men. All these children would be legally his. The father of the woman would not accept from any other man a second bridewealth payment for her, unless he wanted to involve himself in the magical danger (*emuma*) of having 'two men's cattle for the same girl'.

The security for the woman's eventual return lay partly in this very fact that no other men could have legitimate children by her. For in such circumstances her children and herself could not escape the feeling of being received merely on sufferance wherever they went, until they returned to the home of the legal husband and father. Their status outside that house would be the uncomfortable one of 'swallowed thing'.[1] If the husband preferred a divorce, however, he would have to give up the woman's children as well as herself. He would then recover the entire bridewealth, losing all rights over the children the woman had already borne by him as well as any she might bear subsequently. This alternative was often preferred when the woman had taken her children with her into the territory of a hostile clan, where the jural father would find it impracticable to pursue them so as to recover their custody or to enforce any of his legal rights over them. Again, if a husband has been convinced that his wife practises witchcraft, he will voluntarily relinquish his rights over her children, who would be expected to inherit their mother's propensity to evil.[2]

(ii) *Modern system.* The rules now applied by Native Tribunals and by the Administration make it possible for a woman who enters into two or more successive marriages to have two or more successive legitimate families—something that was ruled out under the traditional system. A husband who agrees to divorce his wife is nowadays entitled not only to recover the main part of his bridewealth but also to keep his paternal right. The children will have to be offset by a number of cattle deducted from the returned bridewealth; this deduction establishes him in full paternal rights over them, though at the same time the return of the rest of the cattle deprives him of any right to children borne by the woman thereafter.

After cattle have been returned to the first husband, any other man can give bridewealth for the woman and legitimize her children born after the divorce. The two transactions are often simultaneous, the

[1] See p. 59.

[2] Witchcraft is thought to be inherited by consanguinity, being transmitted from a mother to her children of either sex.

father returning bridewealth to the first husband as soon as he has received it from the second. The fact that nowadays a woman can have *legitimate* children by her second husband inevitably weakens the tie that bound her to the first. Elders even now maintain that a mother will always return to the place where her first legitimate children live ; but the main sanction for her doing so has disappeared.

(c) *Grounds for divorce.* Divorce can be brought about by any of three acts : desertion by the wife, expulsion by the husband, or removal of the wife by her father. We shall deal with these three forms separately.

(i) *Desertion by the wife.* In any case of desertion by a wife the husband's bridewealth rights are secure. It does not matter if he was entirely to blame, for instance if she ran away in self-defence against his ill-treatment. To this extent, he can practise any form of cruelty, short of killing her outright, and still be secure of his rights.

If the deserting wife runs home to her parents, not to a lover, the husband will probably be able to recover her on demand ; but if she very determinedly resists, family or local elders may be called in to decide whether the husband ought not to be satisfied with the return of his cattle instead of his wife. Nowadays such cases frequently find their way to the Native Tribunals. An order for return of the cattle instead of the wife would be thought justified in any of the following cases :

(1) If the husband or one of his co-wives had inflicted severe physical injury (occasional or even regular beatings do not qualify under this heading).
(2) If the husband repeatedly 'refused her food', i.e. would not eat what she prepared (this is an insult or an implicit accusation of witchcraft, poisoning, etc.).
(3) If he or any of the co-wives was a reputed witch.
(4) If he was sexually impotent.
(5) If he did not build her a house in reasonable time.

It should be remembered that the wife has no legal power to insist on divorce in these or any other cases. She can only represent the position as strongly as possible and hope that the elders will support her plea. She has other, more or less illegitimate weapons. She may for instance force the issue—at the risk of magical retribution and public ridicule—by cutting off her own marriage rings in defiance of the elders. She may use a desperate kind of blackmail, threatening to hang herself if she is forced back to a home she detests,—a threat which here and there is actually carried out, leaving the family exposed to the uncomfortable magical consequences of a suicide. Alternatively, she can try 'insulting' her husband so outrageously that he in his turn

will not decently be able to keep her any longer: one device is to throw human excrement into his face[1].

(ii) *Expulsion by the husband.* Under the traditional law a husband who drove away his wife had the same choice between cattle and children as if she had deserted him. Elders of both families would be called to try to make him take the woman back; if he refused he would have to give up all rights over her children as well as herself, and recover his entire bridewealth.

A man would be thought justified in refusing to take back his wife if she:

(1) was excessively insubordinate and refused to work for him or prepare his food,
(2) made continual trouble in the homestead by plaguing his other wives and children,
(3) was a reputed witch,
(4) repeatedly committed adultery,
(5) deserted him for another man.

Sterility in a wife was not and is not counted a sufficient reason for a husband to insist on divorce. On the contrary: he will be forced to keep her, unless there is some valid objection to her besides her barrenness. Hence, although his claim to recovery of cattle would remain intact if the barren wife herself wilfully deserted him, he forfeits all right to the cattle if he drives her away of his own accord. This 'protection' of the barren wife is meant primarily as a protection of her father's *egesaku*. It would be hard on them to have to return cattle for a woman whom no other man will now want to marry; this would be a dead loss. On the other hand, the husband's *egesaku* too would suffer an unwarranted loss by giving up the full number of cattle for a wife who cannot bring in any children; the return of a few cows is therefore a reasonable compensation.

There is only one other case in which a husband loses his right to recover cattle if he drives away his wife. This is the case of *oborema*, that is, injury inflicted by a hard blow on a particular spot between the shoulder-blades, or another spot on top of the skull. The Gusii say that this 'makes the body go bad inside afterwards'. The husband who has struck his wife such a blow must, if he wants divorce, call a native surgeon to open up the back or the skull. If the surgeon finds that the expected dire results have followed on the blow, the husband loses the right to initiate divorce. 'You have defiled the woman, who now will want to take her?' Like the ruling in case of sterility, this rule is primarily a protection of the woman's father's *egesaku*.

[1] One category of semi-formal 'insult' which elders regard seriously is termed *okoema*. Actions classed as *okoema* are commonly such as to indicate a wish for the other person's death: e.g. a wife singing dirges as if she were widowed, or a husband preparing his own food as if he had no wife.

(iii) *Forcible divorce by wife's father.* If a husband persistently refuses to meet the lawful claims of his wife's father—e.g. if he refuses to replace bridewealth cattle which have died—the father is justified in taking back his daughter and returning the balance of the bridewealth. It is important to note that this right is lost after the father has made the *enyangi* ceremony for his daughter. *Enyangi* transfers the woman completely to the husband's *egesaku*, and the father has no right thereafter to enforce his claims by recovering custody of her. This distinction is observed alike by the elders and by the Native Tribunals.

(d) *Divorce procedure.* Divorce proceedings nowadays usually take the form of an alternative claim: the husband demands that either his wife or his cattle be returned to him. It is for the elders to decide which of these alternatives to enforce. The principles on which they are expected to decide have already been outlined.

The option of giving a substitute wife instead of cattle is not supposed to exist in the case of divorce. However, the case may ultimately be settled in what amounts to the same way. If it drags on for long enough, and the cattle cannot be raised, the debtor family are not precluded from giving a girl to the creditor family in settlement of the debt.

Once the father has made up his mind to agree to the divorce and return the bridewealth, the ease of recovery nowadays depends mainly on whether the cattle had already been handed on to a third party. If they have not, recovery should be comparatively easy. This is because until the first bridewealth has been returned the father cannot properly marry his daughter to anybody else. It has always been considered extremely reprehensible for a father to be in possession at the same time of bridewealth paid by two different men for one daughter of his; or, in Gusii terms, 'If the two lots of cattle mix their dung in his yard, it is *emuma* (a sin inviting magical retribution), and it will bring a curse on (*ogoturutumba*) the woman'. Potential suitors would be deterred from embarking on a marriage to which this curse attaches. Nowadays the receiving of two men's cattle for one girl is punishable as 'cheating' under the Penal Code; traditionally it was supposed to brand a man as a false, untrustworthy character (*omorianyi*).

If, however, the bridewealth had already been handed on to a third party the husband will normally have to wait until his divorced wife re-marries; the father ought then to pass the new bridewealth on to the creditor immediately. Endless 'cases' may ensue if the woman does not re-marry in a regular way but goes as 'chooser' (*omobasi*) to a man who can only pay a few cattle for her; then the father is in a cleft stick. Accordingly, a woman who wants a divorce often strengthens her plea by promising her father that if he only consents to return the bridewealth to her present husband she will 'not go to any man' but will stay quietly at home with her parents until they arrange another marriage.

Particularly difficult cases sometimes arise when a father is trying to force return of bridewealth on a husband who much prefers to bide his time and

so prolong his rights over the wife's childbearing potentialities. If she is bearing children by another man the legal husband may have much to gain and little to lose by refusing to accept return of his bridewealth; as long as it is unreturned he will have his *egesaku* increased by no effort of his own. There are other situations in which the husband and the father, being on good terms, have conspired together to put off the return of bridewealth indefinitely. Such cases, when the woman and her lover want divorce which the husband and father combine to refuse, are often very bitterly contested. Nowadays it may take a series of appeals to the higher courts before the woman gets her freedom to re-marry even a lover who is able and willing to pay cattle for her.

CHAPTER V

LEGAL IMPLICATIONS OF THE BRIDEWEALTH TRANSFER

A. The Bridewealth Principle in Family Law

1. *Bridewealth and man's status*

THE man on whose behalf bridewealth has been paid for a woman acquires rights connected with her capacities for child-bearing and for working : but whereas the right to her labour may be lost without compensation (e.g. if she deserts) the right to her children is enduring and incontrovertible. As has already been indicated, bridewealth payment serves to give the husband a permanent status as father of the woman's children,—that is, unless the bridewealth is returned to him or his heirs. It does not matter if the woman is living with another man, either during the husband's lifetime or after his death. The living together of man and wife, and their sharing of the daily routine of the homestead, is regarded as a desirable and natural consequence of marriage, but the bridewealth system as such does nothing to secure it. It is the subsequent *enyangi* ceremony—not the bridewealth mechanism—that provides the specific overt sanctions against desertion or adultery on the wife's part. What the bridewealth mechanism as such is mainly designed to protect is not exclusive right to that woman's society nor even to her sexual enjoyment, but the exclusive right over her offspring.

In short we may say that bridewealth serves primarily to make men fathers—*enyangi* makes them husbands. The primary function of bridewealth payment is to secure a woman's house for a man's *egesaku*. We have now to consider what this implies in practical terms.

(a) *Children over whom rights can be claimed.* The first time a woman is married for bridewealth, any children she may already have are thereby legitimized and belong to the husband's *egesaku*. Subsequently all her children by whomever begotten belong to that *egesaku* until such time as he or his heirs may recover bridewealth by way of divorce. As mentioned before, traditional and modern practice differ regarding the legal right to children in case of divorce. Nowadays a father may retain his children even after divorcing their mother, on condition that some cows are offset from the return of bridewealth.

Under the old divorce law it was possible for children to have at successive times more than one jural father and impossible for a woman to have legitimate

children by more than one man at a time. This is reversed under the present law, which makes it practically impossible for children to change their legal filiation, but allows a woman to have legitimate children in two places at one time. If *A*'s wife goes to live with *B*, *A* will normally recover his bridewealth at the same time as *B* pays new bridewealth; if the condition of offsetting has been observed, *A* will then have the right to all the children born before this transaction, and *B* to those born after it. There is not usually any interregnum, because both *A* and his father-in-law are interested in postponing the return of *A*'s bridewealth until *B* is absolutely ready to pay (*A* because he wants to prolong his paternal rights, and the father-in-law because he does not want to be left without cattle). If by any chance there is such an interregnum the children born during it are on the same footing as those born to an unmarried girl: they can be legitimized by whoever pays bridewealth for her.

A difficulty might seem to arise in the case of children conceived during one marriage and born during another. This is obviated by Gusii observance of the convention that no bridewealth transactions can be conducted in connection with a woman who is pregnant. Gusii say that, as she is 'in danger', her fate must be known for certain before cattle can be moved on her account. Thus if a woman conceives a child by her husband *A* and then leaves him for *B*, the birth of the child has to be awaited before either *A* can recover cattle or *B* pay cattle. 'The woman has your spear, and the spear may kill her'.

It will be convenient to summarize the status of children under the terms used by the Gusii themselves:

(i) *The 'born child'* (*omobiare*, cf. *okobiara*, to give birth): this describes a child born in the ordinary way at the homestead of the husband after the payment of bridewealth. The category includes the great majority of legitimate children, but also those conceived in adultery, whose legal status in no way differs from that of the former.

(ii) *The 'adopted child'* (*omogore*) artificially acquired for the house of an otherwise sonless or childless mother. Such children are practically always of alien origin, being kidnapped, captured or bought from non-Gusii neighbours, or at most from another Gusii tribe. This enables them to be completely absorbed into the adoptive family since there are no competing ties of descent to bind them mystically to a different lineage. Hence the adopted child is legally and ritually on exactly the same footing as a 'born' child of the mother, though personal discrimination is always a latent possibility and tends to flare up at times of disagreement.

(iii) *'Belly (i.e. pregnancy) of the house'* (*enda ye nyomba*): this refers to children borne by an unmarried girl who is still at home in her mother's house. When a subsequent bridewealth payment has legitimized them

their origin should gradually be forgotten, and they can grow up with 'father' and mother on exactly the same footing as the real 'born children.'

(iv) '*Swallowed thing*' (*ekemerwa*) *or* '*brought thing*' (*ekerentane*). This refers to a child which has been brought into the home by its mother but is still legally the child of another man. The unfortunate 'swallowed' child is often reminded in moments of friction that 'you don't belong to us'. As soon as it is old enough to act independently of its mother, it will probably run back to the house of its 'proper' father where it has full legal and ritual status. To taunt anyone with the epithet *ekemerwa* or *ekerentane* is considered a fairly serious insult.

(v) '*Lineage of a girl*' (*egesaku kia omoiseke*). There is a small residue of children for whom no legal paternity is ever established outside the mother's own family group ; e.g. those born to a girl who died before anybody could marry her. These go by default (as it were) to the *egesaku* of the mother's father, but are distinguished from the rest of the lineage by the name 'lineage of a girl'. No slur seems to attach to *egesaku kia omoiseke* of the second generation and onwards. In fact it appears that such links are sometimes fabricated in order to justify genealogically the presence of a strange group among a host lineage. The 'lineage of a girl' must of course, be distinguished from the ordinary 'sister's child' (*omoigwa*) who has his allegiance elsewhere.

(b) *Specific rights of the legal father.* In traditional times the first right of a father was the custody of his legitimate children. As a rule it was considered better not to separate an infant from its mother before the age of weaning (up to two years), but this scruple would not interfere with the pressing of the father's claims if they were likely to be endangered by it. In modern times both the Administration and the Missions have preferred on humanitarian grounds to leave custody in case of divorce with the mother, without necessarily affecting the ultimate legal rights of the father. This humaner compromise would scarcely have been practicable in days when the boundaries of the clan were also those of regular legal procedure.

Even to-day, the Tribunal elders of the old school like to use the new resources of the Administration in support of the father's claim to custody. If a woman has left her husband and no bridewealth has been recovered, they may order that every child she afterwards bears must be seized by askaris and brought home to its jural father. Elders of more modern outlook will take into account the character of the father, especially his ability to have the children properly looked after, before awarding the custody to him.

One of the main advantages of custody from the father's point of view is that it gives him a pull on the mother too, by drawing her back to the place where her children live. If the father is particularly 'cruel' she may stay away until her eldest son is old enough to defend her when necessary ; in such cases she usually returns not to her former hut but to another which

her son will build for her next to his own and at a little distance from the father's cattle pen.

Apart from its use in drawing back the mother, this right of custody was formerly the only effective guarantee of the father's other rights over his children. Chief among these is still the right to the bridewealth received for daughters, involving a corresponding obligation to provide bridewealth for the sons. A related right is that of receiving compensation if any of the children are killed. Apart from this the legal father is entitled to all the natural advantages of being head of an *egesaku*. Its members should work with him, fight with him, promote the fame of his lineage by their numbers and good conduct, tend him in sickness, bury him when he dies, and thereafter make the proper sacrifices to his spirit. Besides, to the Gusii, a numerous *egesaku* is after all an end in itself; it is at a natural political advantage, and at the same time holds possibilities of immortalizing its founder by developing into a structural lineage group such as a clan.

(c) *Attitude to jural and physical children.* Even young and educated men insist that legal paternity means more to them than physical paternity. A man may be on excellent terms with his own children by another man's widow or wife, but if any choice has to be made he is far more likely to side with his own legal children even if they are not physically his.

The 'swallowed child' can be fairly sure his jural father will receive him as kindly as or more kindly than his physical father, in spite of the fact that he may have spent his whole life with the latter and never set eyes on the former. A typical Gusii comment is : 'Why should I set store by my (physical) son? After all, he has his own father' (i.e. his jural father). The difference of attitude is sometimes strikingly illustrated in a case where a widow has lived for years with a 'bachelor', to all intents and purposes like his wife, bearing all her children by him, working for him and sharing his life ; as soon as he can get a wife of his own who bears him children that are legally his, the children of the widow become relatively uninteresting to him. A Gusii wants *egesaku*, not merely offspring.

(d) *Posthumous rights of the bridewealth donor*

(i) *The position of the 'warmer of the house' (omosoi nyomba).* When a husband dies his widow has the possibility of 'divorcing' him, i.e. returning to her own family and persuading them to pay back bridewealth to the dead man's heirs. She could then be remarried to anyone outside her late husband's clan, on payment of bridewealth in the regular way.

In practice it is very rare for any but a young childless widow to divorce her dead husband. By far the greater number of widows themselves elect—or are (sometimes rather forcibly) persuaded—to stay where they are, so as to be with their children and carry on their duties as a member of the dead husband's lineage. Indeed, as we shall see, widowhood often marks a woman's entry into the enjoyment of more freedom and influence than she has ever known before.

If she stays, a widow still capable of bearing children is obliged to take an *omosoi nyomba*, 'warmer of the house'; that is, a 'husband' who will continue to exploit her childbearing potentialities for the benefit of his dead forerunner. It has already been mentioned how a sexually impotent husband can select a 'warmer' to raise children for his wife. The position of the man who takes over a widow is exactly the same. The woman is not his wife, the children are not his children, the property of the 'house' is not under his control; he acts solely in the interests of the (dead) legal husband. The status of the 'warmer of the house' throws particularly clear light on the fact that the fundamental meaning of the bridewealth transaction is to secure the permanent right to the woman's children.

The man in question may be selected by the widow herself, who usually indicates her choice by beginning to send him cooked food as soon as she is ritually cleansed after the husband's death. (This means an interval of about six months to a year, terminated by the ceremony of 'turning over the things'.) It is open to a man to decline such an invitation if he wishes. The man selected must be somebody within the permitted kinship grades; i.e. he must be a real or classificatory[1] 'brother' of the husband (and therefore of the widow) not a real or classificatory 'son' or 'father'; he must not be the youngest full-brother if the dead husband was the eldest, nor vice versa, because he would then be 'like a son' or 'like a father'. Within these limits the choice is wide. For preference a widow should select a man descended from the same father or grandfather as her dead husband, but if she has strong views she is at liberty to pass over all the close relatives and choose any other man of the clan. She could even choose someone of a different clan altogether, but in that case the relatives would insist on his coming to live among them where they can keep an eye on him. Clearly, the point is not so much to choose a man related by real or supposed ties of kinship, but to choose one whose residence within the politically effective group will prevent his usurping any rights that belong to the husband's heirs.

The 'warmer of the house', if he is already married, will be expected to do no more than visit the widow from time to time at her late husband's home, and to help her with the 'man's work' such as building and bush-clearing. But if the widow has no grown children and is afraid of living alone she is justified in moving over to live at his homestead; alternatively, if he is a bachelor and wants home comforts, he can move over to her place. It is in these cases, where the couple to all appearances live together as husband and wife, that the gap between legal and social realities is most marked. Old men warn their juniors of the fallacy of finding happiness with a widow. The bachelor 'warmer' of a widow's house may enjoy her society, live on her grain and her cattle, and watch

[1] The classificatory kinship terms are used throughout the exogamous clan: with few exceptions a wife follows the terminology used by her husband.

his offspring by her growing up in the joint home; but in the end he will have to hand over everything to her dead husband's heirs, and the very sons whom she bore by him can strip him of everything.

The man who occupies such a position may reasonably expect that the widow will lend him cattle of her house for purposes of his own marriage, but he has no redress if she refuses, and in any case he cannot escape repayment to her sons. His chief hope lies in acquiring 'cattle of saving' (*chiombe chia'nibo*) with her help. He can then marry without establishing any debt; or if he lends them to the widow's sons, he or his heirs can claim them back later (which would not have been the case had the lender been the jural father).

Naturally, if the deceased has left no sons and the 'warmer of the house' happens to be the nearest heir (e.g. full-brother), his begetting sons by the widow will amount to deliberately cutting himself out of the inheritance. But the heir has no choice in the matter. The widow can on no account be denied the chance to raise sons for the deceased if the heir himself does not help her, somebody else will. The fundamental right of the deceased to raise his posthumous *egesaku* is something that no Gusii would dare to call in question.

(ii) *The fictitious second-generation egesaku.* The process of founding an *egesaku* entails more than the right to all children begotten by the founder's widow. Even a childless man whose widows are all past childbearing can eventually achieve the satisfaction of a posthumous *egesaku* provided that the essential bridewealth is available.

A sonless widow can acquire by payment of bridewealth a marriageable girl whom she brings home with her. A suitable young man—often an impoverished nephew—is then chosen to live with the girl as husband. The couple may indeed be made husband and wife by the solemnization of *enyangi* but the children of the union are nevertheless members of the *egesaku* of the widow—i.e. of the deceased: they do not belong to the *egesaku* of their physical father. Such children are jural grandchildren of the deceased, legitimized by the bridewealth which 'he' (i.e. his widow) provided to bring their mother into the family. The girl herself has the status of a wife of some imagined son of the widow. If her young 'husband' dies then she ranks as any other widow of the family and if she herself dies or deserts, it is the old woman who will reclaim the bridewealth on behalf of the house.[1]

2. *Bridewealth and woman's status*

The effect of bridewealth payment on a woman's status is that it shifts the emphasis from her membership of a house in her father's *egesaku*, to her new position as foundress of a house in her husband's *egesaku*. But

[1] In rare cases, the procedure I have just outlined for old women is followed by an old man—a widower who feels himself past remarrying and raising children for himself.

though from this time onwards all her children will belong unequivocally to the husband's *egesaku*, not until the *enyangi* ceremony is the woman herself ceremonially and finally cut off from her paternal *egesaku*. Until then her position within the husband's *egesaku* remains somewhat equivocal. We may parallel what has already been said of the man and say that bridewealth primarily makes women mothers whereas *enyangi* makes them wives.

The legal position of a woman for whom bridewealth has been paid is definable rather in terms of duties and restrictions than in terms of rights. She is indeed entitled to ask for divorce if persistently ill-treated or insulted but she has little personal liberty, no right of property, traditionally no claim against the husband for the custody of her own children (even if they are not physically his), and no power to restrain him from cruelty towards herself or from adultery.

Yet this does not give a true picture of the legal position of a Gusii wife and mother, still less of the social reality of her status. In herself she may be legally a 'minor', but in her capacity as head and focus of a house she holds a position of considerable importance. Just as the person of the husband unites the whole *egesaku* of which he is the head—including all the houses of his various wives—so does the person of each wife unite the house founded by her. The fundamental significance of the house in Gusii law, and the extent to which it functions as an independent unit, has already been indicated. It is the unit which acquires and holds property in cattle, which lends and inherits, which can never forfeit a claim or repudiate a debt. When the death of the husband snaps the personal bond and emphasizes the autonomy of the houses, the wife correspondingly finds her status enhanced; she now becomes representative and trustee for her house.

Every house is said to comprise or to possess its own 'live property', its *etugo* (cf. *ogotuga*, to feed or rear), that is, its wealth in terms of living creatures—human progeny, cattle, goats and other domestic creatures. Even while the husband is alive the property is loosely said to 'belong' to the wife. They are in some sense her children, her cattle, her goats, though of course the overriding right in all of them rests with the husband who has given bridewealth for the acquisition of the woman and everything she may produce. Even when the husband is alive, a wife may resist, in the interests of her house, attempts that he may make to 'lend' some of its property to another house. After the husband's death, the property (and in recent times the land) of each house is finally secured to it, and there is nobody with a right of forcing a transfer. The widow's control over the property of her house becomes at once more extensive and better defined. It approximates, in fact, to the rights formerly enjoyed by the husband. She cannot deny any son his proper share of bridewealth when he is ready to make use of it; but within these limits, and as long as she safeguards the interest of the direct heirs, she can do to some extent as she pleases, making or refusing loans to any man of the family. Often a widow with no warmer of the house and no grown son to help her will specially patronize some young man of the husband's near paternal kin who 'comes to work for her like a son'; she

can lend him as many cattle as she likes, but (unless she has no sons and he is the next heir) cannot make them over to him for good.

It is significant of the woman's position as head of her house that neither the land nor the cattle of that house may be formally divided out between heirs while she is alive. Thus until a sonless widow dies the brothers of her husband who are going to inherit from him cannot make permanent boundaries between their fields ; they will say 'all the land belongs to her, she only lends us portions to cultivate'. The same applies to cattle. If there are no sons and the dead man's property is to be divided between brothers or other heirs, no division can take place till the widow dies.

As trustee for her late husband's rights in her house, the widow has the first duty of seeing to the increase of his *egesaku*. It is up to her to choose—within certain limits—her own warmer of the house if she is still capable of bearing children ; otherwise, and if she has no sons, it is she who takes the necessary steps to acquire fictitious 'grandchildren' for the deceased. Secondly, the widow is a sort of trustee over the property of her house, until such time as a son can take over her duties. Besides supervising the lending and borrowing of both cattle and land she may act as litigant in any cause affecting the interests of the house. If any of these functions are discharged by the warmer of the house or by someone of the kin of the deceased, he may be acting in the capacity of adviser and support to the widow but not, usually, as full legal representative of the deceased.

3. *Bridewealth and child's status*

We have seen how bridewealth payment determines legitimate filiation, i.e. the child's membership of its father's *egesaku* and its mother's house. It remains to be shown what this actually means, in concrete terms, for the status of the child.

In Gusii society, organized as it is into a hierarchy of patrilineal descent groups, legal filiation to the father constitutes perhaps the most important single determinant of social position. To begin with, it binds son to father by a network of legal and economic ties ; it alone can confer the right to a marriage portion and to a share in the heritable patrimony, since neither of them can be claimed anywhere outside the rightful *egesaku*. Furthermore, it creates an inescapable mystical nexus that binds man to the spirits of his legal (not necessarily his physical) ancestors in the male line. Associated with this cardinal importance of the *egesaku* in the spirit cult is the fact that succession to most ritual or magical powers and offices passes in the same line.

Legitimate filiation to the mother—i.e. membership of a house—is important principally in the sphere of cattle holding, as already described, and of inheritance which we now have to discuss.

B. The Bridewealth Principle in the Law of Inheritance

Gusii bridewealth law and inheritance law are bound up together, not merely because cattle and goats are traditionally the main form of heritable asset, but also because the principles which govern bridewealth allocation are practically the same as those which govern inheritance. The laws of inheritance are in fact no more than an extension of what have already been called the rules of priority in allotting bridewealth ; the death of the husband and father merely imposes rigidity on arrangements that within limits could be modified by him while he lived.

The traditional law of inheritance (*omwando*, pl. *emiando*) was concerned solely with rights to wealth in the form of livestock, whether actual flocks and herds or potential bridewealth of children. Personal belongings were not shared out according to the same rules but in conformity with other kinship principles, while the inheritance of land is still a novel concept, with rules being slowly fashioned by the day-to-day judgments of tribunals and home elders. Like the bridewealth law itself, the law regulating inheritance is based on the principle that the function of cattle is to establish the *egesaku*.

The laws of inheritance govern allotment between houses, i.e. how a man's assets are to be distributed between the houses of different wives, and what happens to the assets of a house that dies out. They also govern division between individuals, i.e. how the members of one house share out the assets which descend to them jointly. A Gusii never inherits merely as relative of so-and-so, but always as a member of a house. The question of allotment between houses is considered the more important of the two.

1. *Allotment between houses*

The property rights of a house as secured to it on the death of the husband and father correspond exactly to the rights which it had during the father's lifetime. Each house is entitled to its own cattle of daughters, its own cattle of saving (i.e. those produced by its own members) and any animals 'tied for' it by the father while he was alive.[1] There remains the question of dividing the father's personal unallotted cattle of saving, if any. The youngest house, as we have seen, was always supposed to have a prior right to these, on the basis of a supposed greater need. But if there is actually no special need in any one house the cattle of saving are usually divided equally between all the houses with a bias in favour of the first house. 'The sons of the first wife are to have most because she is his great wife and clearer of the ash (*omogucharibu*, an epithet for the first wife who first tidied up the former bachelor's

[1] See p. 30.

hut), who helped him to get rich, who cooked for him and worked in his gardens. She helped him to get the cattle because she produced so much grain and also took care of everything when he went out cattle-raiding.'[1]

When a house dies out, the first heir is the 'linked house'—the one which has always had a preferential claim on its assistance ; if three houses had been linked the surviving two would divide the property of the extinct one. There may however be no linked house within this particular *egesaku*. the household may have been monogamous. In this case the successor will be a house of the *egesaku* of next higher order—one that shares with the extinct one the nearest possible direct female ancestor. Thus, if *A*, a monogamist, dies without direct male descendants, his whole property passes to a house of his father's *egesaku*, being the house that had *A*'s mother as ancestress—i.e. consisting of *A*'s full-brothers. Failing this, inheritance reverts to another house sharing the nearest possible *male* ancestor, i.e. *A*'s father; that is, it passes to the house consisting of *A*'s half-brothers, if possible the 'linked' one. The alternation of male and female links persists indefinitely. Thus the next heir would be the house having *A*'s father's mother as common ancestress, i.e. *A*'s full paternal uncles ; next after that, the one having *A*'s father's father as common ancestor, i.e. *A*'s paternal half-uncles (of the linked house if possible).

The inheritance laws of this predominantly patrilineal society are therefore pervaded by quasi-matrilineal ideas, based on the concept of the unity of the house. This conception in its turn depends on the principles of bridewealth, for, as we have seen, the identity of the house is determined solely by bridewealth payments. One bridewealth payment means one house even if the children have more than one mother (as in the case of the substitute wife) or more than one father (as in the case of posthumous and illegitimate children) ; two bridewealth payments mean two houses, even if the mother—once widowed or divorced—is the same woman.

2. *Division within the house*

The part of inheritance law that regulates division (between members of the same house) is not so directly determined by the law of bridewealth, but is relevant here in so far as it concerns the sharing out of potential bridewealth. Here again, nothing fundamental is altered by the father's death. The rules governing allotment of daughter's bridewealth are those already stated in Chapter III, and the only difference is that when the father can no longer enforce them this task passes to his brothers, his eldest son, or other responsible elders of the family. The division of cattle of saving will follow much the same lines as their allotment between houses : the

[1] In actual cases of division of a father's personal cattle one sees vacillations between the intention to follow these principles blindly as binding rules, and the tendency to treat them merely as guides that can be overruled on equitable grounds. For instance the youngest house may claim the largest share even though it has a surplus of daughters and no real need at all, whereas in other cases a pressing need in any other house overrides the right of the youngest. In general it may be said that needs usually determine the ultimate division.

youngest is supposed to deserve more on grounds of speical need, but if there is actually no special need there may be an equal division with only a bias in favour of the eldest.

In contrast to the precision with which it regulates the order of inheritance between houses, Gusii law is vague about the individual division. When a man dies without direct male heirs it is perfectly clear which house must inherit his property, but the subsequent share-out is left more or less to the agreement of the parties themselves. Thus if *A* dies without direct male heirs the law will be clear in awarding all his cattle and goats to his full-brothers *B* and *C*, but whether *B* or *C* gets the lion's share will depend on considerations of equity, i.e. on who most needs help to found his *egesaku*. If *B*, for instance, has a wife and *C* has not, *C* will probably be allowed to use the whole inheritance of *A*—subject to a vague obligation to give something back to *B* if and when he can.

If the father of the co-wives is not alive, the eldest co-heir takes his place in supervising the division. In practice the eldest co-heir takes possession of the whole inheritance himself and then hands out the agreed portions to the younger brothers.

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